

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-6027

United States Court of Appeals FOR THE SECOND CIRCUIT

CAPITAL REGION CITIZENS COMMITTEE, THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE, NEW YORK STATE COALITION FOR SANE TRANSPORTATION - N. Y. STATE COST, TOWN OF ROTTERDAM, ST. FRANCIS COMMANDERY HALL ASSOCIATION, INC., a/k/a KNIGHTS OF ST. JOHN, JOHN W. KESEBERG, CHESTER and JANE SNYDER, JOHN K. and MARY E. ALDERSHOFF and GARRETT J. and DELLA M. ALDERSHOFF, WILLIAM F. and WILMA SCHULTZE, ARTHUR W. and JANICE SCOTT, ROBERT G. and MARY LOU SAWYER, and DANIEL T. and DORIS SEIF,

Plaintiffs-Appellants,

-against-

JOHN A. VOLPE, Secretary of Transportation of the United States; GERALD D. LOVE, Regional Federal Highway Administrator of the Bureau of Roads, United States Department of Transportation; ROBERT E. KIRBY, Division Engineer of the Bureau of Roads, Federal Highway Administration, United States Department of Transportation; THEODORE W. PARKER, Commissioner of the Department of Transportation of the State of New York; and CHARLES E. CARLSON, Regional Director, New York State Department of Transportation, Region 1, And each and every one of the foregoing individually as well as in his designated official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

APPENDIX Volume I

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

BEST COPY AVAILABLE

A1

72-CV- 254

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

CAPITAL REGION CITIZENS COMMITTEE, THE
RICHMONDVILLE PROPERTY OWNERS COMMITTEE,
NEW YORK STATE COALITION FOR SANE TRANSPORTATION-
N.Y. STATE COST, TOWN OF KOTTERDAM, TOWN OF
-PRINCETOWN, ST. FRANCIS COMMANDERY HALL
ASSOCIATION, INC., a/k/a KNIGHTS OF ST. JOHN,
JOHN W. KESLERBERG, CHESTER and JANE SNYDER,
JOHN K. and MARY E. ALDERSHOFF and GARRETT J.
and DELIA M. ALDERSHOFF, WILLIAM F. and WILMA
SCHULTZE, ARTHUR W. and JANICE SCOTT, ROBERT
G. and MARY LOU SAWYER, and DANIEL T. and
DORIS SEIP,

For plaintiff:

Herbert A. Posner, Esq.-
Room 533, Fifth Floor--
Legislative Office Building-
Albany, New York
Robert Kafin, Esq.
115 Maple St.
Glens Falls, N. Y. 12801

Plaintiffs

(Town of Princetown removed as defendant
per order of Judge Foley filed 9/14/72)

-against-

JOHN A. VOLPE, Secretary of Transportation of the
United States; GERALD D. LOVE, Regional Federal
Highway Administrator of the Bureau of Roads,
United States Department of Transportation;
ROBERT E. KIRBY, Division Engineer of the
Bureau of Roads, Federal Highway Administration,
United States Department of Transportation;
THEODORE W. PARKER, Commissioner of the
Department of Transportation of the State of
New York; and, CHARLES E. CARLSON, Regional
Director, New York State Department of Trans-
portation, Region 1, And each and every one of
the foregoing individually as well as in his
designated official capacity,

Defendants

For defendant:

James M. Sullivan, Jr.
U.S. Post Office & Court House
Albany, New York 12207 (Cullum)

William Hoppen, Esq.
Ardsley-on-Hunson
New York, New York 10503
(For The Richmondville Property Owners
Committee and New York State Coalitions
for Sane Transportation)

STATISTICAL RECORD

COSTS

J.S. 5 mailed

Clerk

J.S. 6 mailed

Marshal

Basis of Action:

Administrative Procedure

Act, National Environmental

Policy Act

Action arose at:

Docket fee

Witness fees

Depositions

DATE
1972

NAME OR
RECEIPT NO.

REC.

DISB.

May 18 Herbert A. Posner, Esq.

15 00

" 19 Dep. Cr. Tr. U.S.

15 00

1976

Nov. 29 52383 5 00

Nov. 30 17 5 00

Nov. 29 52409 5 00

Nov. 30 17 5 00

A

Capital Region Citizens Committee et al vs. John A. Volpe, Sec. of
Transportation of the US et al

DATE	PROCEEDINGS	Date of Judgment
1972		
May 18	Filed complaint-issued summons-origiml-13 copies & del'vd to Marshal for service	
June 1	summons served on John A. Volpe, Gerald D. Love, and Robert E. Kirby on 5/24/72 by certified mail, certificates #533791, 533788 and 533790 respectively; on U.S. Atty, certificate 533789, certified mail on Atty Gen.; served 5/24/72 Theodore W. Parker, Comm. of NY State Dept. of Transportation through Audrey I. Atty, and on Charles E. Carlson through Audrey Hernberg,	
" 12	Order enlarging time-defendants	
July 17	Order enlarging time in which defendants must serve their answer from July 24, 1972 to August 24, 1972, together with Affidavit of James E. Cullum	
" 20	Order of Judge Foley enlarging time to answer to August 24, 1972	
Aug. 23	Answer	
Sept. 11	Answer of defendants Parker and Carlson	
" 11	Notice of Motion returnable Sept. 25, 1972 at Utica, Motion for Summary Judgment pursuant to Rule 56, Affidavit and Affidavit of Service	
" 11	Box containing Exhibits 1 to 134	
" 14	Stipulation and order amending title to remove Town of Princetown as a defendant (Foley)	
" 15	Notice of Motion for summary judgment returnable Sept. 25, 1972 at Utica, Motion pursuant to Rule 56, Affidavit in support of motion, and Exhibit	
" 15	Affidavit of Robert E. Kirby	
" 15	List of Exhibits to Robert E. Kirby's affidavit	
" 15	Exhibit Book 1	
" 15	Exhibit Book 2	
" 15	Exhibit Book 3	
" 15	Affidavit of Donato J. Altobelli	
" 15	Affidavit of J.J. Barakos	
" 25	Memorandum of Law in support of Motion for Summary Judgment pursuant to Rule 56	
" 25	Motion for summary judgment on behalf of U.S. Motion for summary judgment on behalf of defendants Parker and Carlson. Adjourned to Oct. 30 at Utica. Briefs of defendants to be filed on or before Oct. 2. Plaintiffs have to 10/20 to file answering memoranda with copies to Judge Port's chambers at Auburn	
Oct. 6	Filed Memorandum of Law	
Nov. 2	Adjourned to Nov 27 at Utica	
" 27	Filed Supplemental Affidavit of J.J. Barakos	
" 27	Exhibits to J.J. Barakos' Supplemental Affidavit	
" 27	Motion for summary judgment on behalf of U.S. Motion for summary judgment on behalf of defendants Parker and Carlson. Decision reserved	
1973		
Sept. 26	Filed Order to Show Cause for preliminary injunction returnable Sept. 24, 1973 at Utica-Affidavit in support of motion for summary judgment	
" 26	Affidavit in opposition to motion	
" 26	Memorandum of law	
" 26	" " " (Lefkowitz)	
" 26	Affidavit in opposition to motion for preliminary injunction (Raymond T. Sc	
" 28	Return of order to show cause. Adj. to Oct. 22 at Utica.	
Oct. 17	Filed Notice of Motion and Motion on behalf of Suburban Excavators, Inc. for Leave to Intervene returnable Oct. 22, 1973 at Utica, New York & Proposed Answer	
" "	Filed Notice of Motion and Motion on behalf of Perini Corporation to Intervene as party defendant and proposed answer returnable Oct. 22, 1973 at Utica, N.Y.	
" "	Filed Affidavit in Opposition to Motion for Preliminary Injunction by Phillip S. Arensberg, Attorney for intervenor Perini Corp..	
" "	Filed Affidavit in Opposition to Motion for Preliminary Injunction by Phillip S. Arensberg, Attorney for intervenor Suburban Excavators, Inc.	
Oct. 23	Filed supplemental affidavit in opposition to motion for preliminary injunction	
Oct. 26	Filed copy of letter from Asst. Atty. General Douglas S. Dales to Judge Port dated 10/24/73	

D. C. 110 Rev. Civil Docket Continuation

DATE 1973	PROCEEDINGS	Date Judge
Oct. 29	Filed Plaintiffs' Memorandum in opposition to motions to intervene	
" 29	Affidavit in opposition to motions to intervene	
" 29	Return of order to show cause-not heard; motion to intervene by Suburban-reserve Motion to intervene by Perini Corp-reserved. Decision reserved on preliminary injunction	
Nov. 8	Filed Intervenor's Reply Memorandum of Law	
" 15	Memorandum-Decision and Order (11/14/73) granting summary judgment dismissing plaintiffs' Sixth, Seventh and Eighth claims; that defendants' motions for summary judgment be otherwise denied.; pending trial defendants are enjoined and restrained from granting P S & E approval to projects listed; pending trial defendants are enjoined and restrained from disbursing any further federal funds for work on projects listed, and motions of Perini Corporation and Suburban Excavators, Inc. for leave to intervene are denied, however, they are granted leave to appear as amicus curiae on the trial for purposes submitting memoranda of law in support of defendants' position -HON.E. PORT	
" 26	Order to Show Cause returnable Dec. 10, 1973 at 10:00 a.m. at Syracuse and Affidavit of Malcolm D. Graham	
" 30	Affidavit of service of Order to Show Cause	
Dec. 10	Return of Order to Show Cause. Will submit order with changes	
1974 27	Filed Order amending Memorandum-Decision and Order dated 11/14/73 -HON.E. PORT, U	
May 6	Notice of Motion returnable May 13, 1974. motion to modify preliminary injunction	
May 13	Motion to modify preliminary injunction. Submitted	
" 24	Filed Memorandum-Decision and Order (Port) granting motion to modify preliminary injunction and modifying order dated 11/14/73	
1975		
Dec. 12	Filed Motion to Modify Preliminary Injunction and Notice of Motion, returnable Dec. 22, 1975 at Utica	
Dec. 12	Filed State Defendants' Memorandum of Law	
Dec. 22	Motion to Modify Preliminary Injunction is adjourned on consent to Jan. 12, 1976 at Syracuse	
1976		
Jan. 7	Filed Consent to Change Attorney together with certificate of service	
Jan. 8	Filed Affidavit of James E. Cullum	
Jan. 12	Motion to Modify Preliminary Injunction adjourned to 1/26/76. Continuance granted until 1/26/76 at Utica. Any responsive papers to be filed not later than 1 week from today.	
Jan. 20	Filed affidavit of Robert J. Kafin in opposition to motion to modify preliminary injunction & Affidavit of Service	
Jan. 20	Filed Plaintiffs' Memorandum of Law in Opposition to Motion to Modify preliminary injunction	
Jan. 26	Filed Notice of Appearance for Plaintiffs The Richmondville Property Owners Committee and New York State Coalition for Safe Transportation. Affidavit of William Hoppen and Attorney's Affirmation of Service by Mail	
Jan. 26	Filed Plaintiff's Memorandum of Law	
1976		
Jan. 18	Off dismissal calendar	
Jan. 26	Motion to Modify Preliminary Injunction of 11/14/73- Granted. Judge to prepare Order.	
Jan. 29	Filed Memorandum and Order of Judge Port (1/28/76) modifying the Memorandum-Decision and Order dated Nov. 14, 1973	
Jan. 30	Filed Affidavit of William C. Hennessy	
Mar. 8	Filed Notice of Change of Attorney for Plaintiff	

CIVIL ACTION NO. 72-CV-254

DATE	PROCEEDINGS	Date of Judgment
1976		
Apr. 29	✓ Filed Notice of Motion, returnable May 10, 1976 at Syracuse, Motion to Modify Preliminary Injunction, Affidavit in Support of Motion by Douglas S. Dales, Jr. & Affidavit of Raymond T. Schuler	
Apr. 30	✓ Filed transcript of proceedings concerning a Motion to Modify Preliminary Injunction held January 26, 1976 before Hon. Edmund Port	
May 6	✓ Filed Affidavit of James E. Cullum & Certification of Service by Mail	
May 10	✓ Motion to modify preliminary injunction-Adjourned to Utica, May 24th on consent	
May 24	✓ Motion to Modify Preliminary Injunction-Adjourned to June 14, 1976 at Syracuse on consent	
June 11	✓ Filed Plaintiffs' Memorandum of Law in Opposition to Motion to Modify Preliminary Injunction	
June 14	✓ Filed Plaintiff's Memorandum of Law	
June 14	✓ Filed Affidavits	
June 14	✓ Filed Envelope containing federal defendants affidavit with exhibits in support of petition to modify injunction	
June 14	✓ Filed Affidavit of Personal Service by Robert J. Kafin	
June 14	✓ Filed Affidavit of Service by Mail of Patti G. Holmquist	
June 14	✓ Motion to Modify Preliminary Injunction-adjourned to June 28, 1976 at Utica	
June 28	✓ Motion to Modify Preliminary Injunction-Motion is deferred and shall be treated as a motion for Summary Judgment. Adjourned to Sept. 13, 1976 at Syracuse. State to file supplemental papers by August 2, 1976. Respc papers to be served and filed by August 30, 1976. If State cannot meet that schedule they should contact the Court	
July 19	✓ Filed transcript of proceedings of January 26, 1976 at Utica before Judge Port	
Aug. 2	✓ Filed Affidavit of Douglas S. Dales, Jr.	
Aug. 2	✓ Filed Appendix B (Technical Studies)	
Aug. 2	✓ Filed Appendix B (Final Determination)	
Aug. 2	✓ Filed Appendix D and G	
Aug. 2	✓ Filed Appendix K, L and M	
Aug. 9	✓ Filed Supplemental Affidavit of William A. Nostrand, Jr., with Exhibits, of Federal defendants in support of petition to modify injunction	
Aug. 26	✓ Filed Letter from Atty. William Hoppen, dated 8/20/76 requesting adjournment of motion scheduled for Sept. 13, 1976 to Sept. 27, 1976 at Utica and endorsement of Judge Port thereon granting said adjournment	
Sept. 10	✓ Filed Affidavit of Jack R. Lebowitz in Opposition to Defendants' Motion and Affidavit of Service by Mail	
Sept. 13	✓ Motion to Modify Preliminary Injunction-Adjourned to Sept. 27, 1976 at Utica by Order of the Court	
Sept. 27	✓ Motion to modify preliminary injunction - State's Motion is granted. Preliminary Injunction is dissolved as to P9357.08 thru P9357.17 and P1357.01 thru 1357.04. Judge to prepare Order and Clerk to serve copies on Parties. Stay of Order for ten days.	
Sept. 29	✓ Filed Order of Judge Port granting State defendants' motion and modifying order dated Nov. 14, 1973 eliminating restraint on the grant of PS&E approval as to PINS 9357.08-17 and 1357.01-.04 and injunction as to PINS is dissolved. Partial summary judgment in favor of the defendants dismissing complaint as to PINS. Preliminary injunction continued for ten days	
Nov. 26	✓ Filed Notice of Appeal	
Nov. 26	✓ Filed Affidavit of Service by Mail of Notice of Appeal	
Nov. 29	✓ Filed Notice of Appeal	
Nov. 29	✓ Filed Undertaking for Costs on Appeal	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

-----x

CAPITAL REGION CITIZENS COMMITTEE,	:	
THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE,	:	
NEW YORK STATE COALITION FOR SANE TRANSPORTATION -	:	
N. Y. STATE COST,	:	Civil
TOWN OF ROTTERDAM,	:	Action
	:	No.
ST. FRANCIS COMMANDERY HALL ASSOCIATION, INC.,	:	72-CV-254
a/k/a KNIGHTS OF ST. JOHN,	:	
JOHN W. KESEBERG,	:	
CHESTER and JANE SNYDER,	:	
JOHN K. and MARY E. ALDERSHOFF and	:	
GARRETT J. and DELLA M. ALDERSHOFF,	:	
WILLIAM F. and WILMA SCHULTZE,	:	COMPLAINT
ARTHUR W. and JANICE SCOTT,	:	
ROBERT G. and MARY LOU SAWYER, and	:	
DANIEL T. and DORIS SEIP,	:	

Plaintiffs, :

-against-

JOHN A VOLPE, Secretary of Transportation of
the United States; :

GERALD D. LOVE, Regional Federal Highway
Administrator of the Bureau of Roads, :
United States Department of Transportation; :

ROBERT E. KIRBY, Division Engineer of the
Bureau of Roads, Federal Highway Administration, :
United States Department of Transportation; :

THEODORE W. PARKER, Commissioner of the Department
of Transportation of the State of New York; and, :
CHARLES E. CARLSON, Regional Director, New York
State Department of Transportation, Region 1, :
And each and every one of the foregoing in- :
dividually as well as in his designated official :
capacity, :

Defendants. :

-----x

Plaintiffs, by their attorneys, HERBERT A. POSNER,
WILLIAM HOPPEN and GEORGE V. PALMER, complain as follows:

AS AND FOR PLAINTIFFS' FIRST CLAIM

1. This is an action for a declaratory judgment
under 28 U. S. C. §2201, for appropriate relief under 28 U. S. C.

§2202, and for a permanent injunction in connection with the proposed construction of a highway in Central New York between the City of Binghamton and the Capital District formally designated as I-88, or otherwise as Interstate Route 508, pending compliance with environmental and hearing requirements of Federal law. Jurisdiction of the Court is based on 28 U. S. C. §1331 (Federal question); 5 U. S. C. §§701-706 (Administrative Procedure Act), as well as the foregoing; and, in addition, 42 U. S. C. §4321, et seq. (National Environmental Policy Act of 1969); 23 U. S. C. §101, et seq., and §103(e)(1), (3) (Interstate Highway System), §128 (Public hearings); Pub. L. 90-495; 28 U. S. C. §1361 (Mandamus); 49 U. S. C. §1651, et seq. (Department of Transportation Act); 42 U. S. C. §1857, et seq., including Pub. L. 91-604, 84 Stat. 1676 (Federal Clean Air Amendments of 1970); 33 U. S. C. §§401, 403, 407, 411, 491 and 525 (Navigation and Navigable Waters); New York State Transportation Law, §§14, 14-a; New York State Environmental Conservation Law, §10; United States Constitution, Amendments V, IX, XIV; New York State Constitution, Article XIV, Section 4; and the pendent jurisdiction of this Court. There is an actual controversy that exceeds \$10,000.00 exclusive of interest and costs, and the action arises under the Constitution and laws of the United States as set forth above; venue lies in the Northern District of New York under 28 U. S. C. §1391.

2. Plaintiffs bring this action on behalf of all persons similarly situated who form a class too numerous for a practicable adjudication and determination of this matter.

3. Plaintiff CAPITAL REGION CITIZENS COMMITTEE is an unincorporated association and coordinating group consisting

of individual members and local civic and citizen groups from Altamont, Albany, Amsterdam, Cohoes, Colonie, Delanson, Duanesburg, Guilderland, Johnstown, Niskayuna, Princetown, Quaker Street, Rotterdam, Troy and Schenectady, all in the State of New York. The objects and purposes of the Capital Region Citizens Committee, in addition to their education and social functions, include the preservation and protection of the natural, cultural, and historic resources of the region and the values of the homes and properties of the members of the Committee and other residents, citizens and property owners of the area, and the protection of the environment through better transportation and other planning.

Plaintiff THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE is an unincorporated association consisting of individual members in the Richmondville area and in East Worcester and other concerned citizens in Schoharie and Otsego counties, a number of whom own properties in the area of proposed construction. The purpose of plaintiff organization is to protect the natural resources of the Richmondville area and the value of the homes and properties of the members of the committee and others.

Plaintiff NEW YORK STATE COALITION FOR SANE TRANSPORTATION - N. Y. STATE COST is an unincorporated association and coordinating group consisting of citizen transportation and environmental planning groups from all parts of the State. Its specific objects and purposes are related to better fiscal and transportation planning in the State of New York to environmental standards.

4. It is hereby alleged, with regard to each of the foregoing organizational plaintiffs, that individual members

thereof will suffer damage by reason of the construction aforesaid, both by reason of the impairment of natural resources and their enjoyment thereof, and by reason of the violation of their property rights in their homes and residential properties, as follows:

Capital Region Citizens Committee: John W. Keseberg, Chester and Jane Snyder, John K. and Mary E. Aldershoff and Garrett J. and Della M. Aldershoff.

The Richmondville Property Owners Committee: William F. and Wilma Schultze, Arthur W. and Janice Scott, Robert G. and Mary Lou Sawyer, and Daniel T. and Doris Seip.

New York State Coalition for Sane Transportation - N.Y. State COST: Ralph H. Rosenthal, Mildred C. Racko.

5. Plaintiffs TOWN OF ROTTERDAM and TOWN-OF-PRINCETOWN are municipal corporations existing under the laws of the State of New York; plaintiff ST. FRANCIS COMMANDERY HALL ASSOCIATION, INC., also known as KNIGHTS OF ST. JOHN, is a fraternal organization duly organized and existing under the laws of the State of New York and is the owner of real property in the area of the proposed construction.

6. Plaintiffs JOHN W. KESEBERG, CHESTER and JANE SNYDER, and JOHN K. and MARY E. ALDERSHOFF and GARRETT J. and DELLA M. ALDERSHOFF; and WILLIAM F. and WILMA SCHULZE, ARTHUR W. and JANICE SCOTT, ROBERT G. and MARY LOU SAWYER, and DANIEL T. and DORIS SEIP, and each of them are owners of homes and other properties in the area of the proposed construction.

7. Defendant JOHN A. VOLPE is currently Secretary of Transportation of the United States; defendants GERALD D. LOVE and ROBERT E. KIRBY are, respectively, the Regional Federal Highway Administrator and the Division Engineer for New York State of the Bureau of Roads of the Federal Highway Administration of the United States Department of Transportation; defendant THEODORE W. PARKER is Commissioner of Transportation of the State of New York; defendant CHARLES E. CARLSON is the Regional Director of Region 1 for the New York State Department of Transportation. Each of the aforesaid defendants is sued individually as well as in his designated official capacity.

8. Upon information and belief, the State of New York through its Department of Transportation is preparing to construct a highway, parallelling existing Route 7 and the now deteriorating Delaware & Hudson Railroad tie between Binghamton and Albany, some 130 miles in length. The purposes of this construction, as set forth by the New York State Department of Transportation, are to promote economic growth and development along the Route 7 corridor, to decrease travel time and cost, to increase safety, comfort and convenience of highway travel, and to complete a missing connection in the Interstate Highway System, to facilitate long-distance travel. In addition to the transportation objectives, regional development objectives are

also detailed by the State in terms of the relation between the proposed construction and the economic vitality of the region, including the State's Appalachian program, and also to promote the development of the Susquehanna Valley and of the Cobleskill-schoharie Appalachian growth areas, which are located within or adjacent to the corridor. No specific mention is made by the State, in its report of planning, of the interrelationship between the proposed construction and a proposed 367-mile proposed developmental expressway across the states of New York, Vermont, New Hampshire and Maine, with its termini at Amsterdam, New York and Calais, Maine, the so-called Northern New England Expressway; or of the proposed interconnections beyond Binghamton; or of the effect of the proposed construction upon the already deteriorating rail facilities of the Susquehanna Corridor. A corridor public hearing was held on May 27, 1970, with regard to the 20 mile segment encompassing the northern terminal section in the Capital District; other corridor public hearings were or should have been held prior to that date with regard to other sections of the proposed construction, although some required so to be held, were not; the State of New York has not complied with the requirements of Federal law in connection with the holding of public hearings. Proposed locations, in a number of instances, have been changed from those specified in the notices in such a way as to have a substantially different social, economic, or environmental effect, but no original or new public hearings have been held.

9. By the National Environmental Policy Act of 1969, Pub. L. 91-190, 83 Stat. 852 (42 U. S. C. §4331), et seq., the

Congress has provided an environmental framework in terms of stated national environmental policy and its applicability to all agencies of the Federal Government that must be read in pari materia with existing authorizations and procedures prescribed for such agencies.

10. In particular, Section 102(2)(C) of the said National Environmental Policy Act of 1969 (42 U. S. C. §4332(2)(C) requires all Federal agencies that contemplate actions which will significantly affect the quality of the human environment to file detailed statements regarding the expected environmental impact of the proposed action, which statements must accompany the proposal through the existing agency review process.

11. Defendant Volpe has arbitrarily and capriciously refused to comply with the requirements of the National Environmental Policy Act as aforesaid in that he has not prepared and circulated the required statement or statements and has not taken measures as required by Section 4333 of Title 42 of the United States Code to bring the authority and policies of the Department of Transportation into conformity with the intent, purposes, and procedures of the said Act.

12. On information and belief, in purported compliance with the terms of the National Environmental Policy Act, the State of New York, acting through its Department of Transportation, has prepared certain documentation in the form of draft environmental impact statements for various segments of the

proposed project, has circulated such proposed statements to interested agencies and the public and now, according to the State Department of Transportation and the Federal Regional Office of the United States Department of Transportation, has prepared one or more purported final environmental impact statements with regard to the project, to be submitted for approval to the Federal defendants, including the defendant Volpe as the responsible Federal official under Section 102(2)(C) of the Act, but not in accordance with law.

13. Further, on information and belief, neither the draft environmental impact statement or statements nor the final environmental impact statement or statements prepared by the Department of Transportation of the State of New York complies with the requirements of Section 102(2)(C) of said National Environmental Policy Act in that the aforesaid statements do not constitute the detailed statement required under the Federal law, and have not been prepared and submitted by the required Federal official as required by law.

14. In particular, the purported environmental impact statements fail to comply with the requirements of Section 102(2)(C) of the National Environmental Policy Act in that:

A. They fail adequately to report the environmental impact of the proposed action, as required by law.

B. The statements do not adequately report with reference to adverse environmental effects which cannot be avoided should the proposal be implemented.

C. The statements fail, notwithstanding the

requirement of law, fully to report on consideration of alternatives to the proposed action, including provision for effective rail service in the corridor and related elements of public transportation.

D. They fail adequately to report on the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, in terms of alternate modes of transportation.

E. They fail adequately to report with reference to any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Furthermore, the segmented submission procedure of which the aforementioned environmental impact statements are illustrative can in no wise be considered to meet the requirements of the National Environmental Policy Act in terms of the detailed statement required, and can in no wise effectively relate to the corridor and regional considerations involved, and to the larger systems of transportation of which these particular segments are but relatively small parts, nor has the required environmental impact statement, prepared by the Federal Department of Transportation in accordance with law, accompanied the proposal through the existing agency review process. Inasmuch as the deficiencies of the purported environmental impact statements are directly related to the larger failure of the Department of Transportation itself, under Section 4333 of Title 42 of

the United States Code, to bring its authority and policies into conformity with the intent, purposes, and procedures of the said National Environmental Policy Act, in terms of effective planning for integrated transportation to environmental standards, the failure of the defendants to have prepared adequate environmental impact statements, or to have conducted the necessary research to comply with the law, must be considered in conjunction with the larger failure of the Department to have complied in its agency implementation of the Environmental Policy Act, and with the instant requested relief that the defendants be permanently enjoined from proceeding with the signature and approval of the proposed purported final environmental impact statement or statements or the submission of said statement or statements to the President, the Council on Environmental Quality or otherwise as provided by Section 102(2)(C) of the said Act, unless and until there has been full compliance with the terms and requirements of the terms of the aforesaid National Environmental Policy Act as set forth above and, in addition, be further permanently enjoined from proceeding with the condemnation of lands, advertising and acceptance of bids, commencement of construction and disbursement of funds in connection therewith until the said defendants comply with the aforesaid provisions of the Environmental Policy Act of 1969 with regard to the preparation and filing of a legally sufficient environmental impact statement as required by Section 102(2)(C) of said Act and with regard to the bringing of the authority and procedures of the United States Department of Transportation

into conformity with the intent, purposes, and procedure of said Act.

15. Construction of the project herein without compliance with the terms of the National Environmental Policy Act of 1969 constitutes arbitrary and capricious action by the defendants, and is in violation of law. The delegation by the defendant Volpe to State or local agencies of the duty to prepare, in draft and final form, the required environmental statement required by law to be submitted by the defendant Volpe to the President and the Council on Environmental Quality is ineffective under the law and does not relieve the defendant Volpe of his primary and non-delegable responsibility under the law for fulfilling that function and for the adequacy of the preparation of said statements. Failure by the various state or local agencies involved, and the failure of the State of New York, in the instant case, to have complied with the terms of the National Environmental Policy Act compound the neglect and misfeasance of the defendant Volpe himself, and is in violation of the law. On information and belief, plaintiffs aver that, unless restrained by this Court, defendants will construct the project in violation of law; and further aver that damages to plaintiffs occasioned by such illegal construction will be irreparable.

16. Plaintiffs have no adequate remedy at law.

AS AND FOR PLAINTIFFS' SECOND CLAIM

17. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "16" above, with the same force and effect as if fully set forth herein and repeated; and further allege:

18. As a further element of the failure of defendants adequately to consider and report under the terms of the National Environmental Policy Act of 1969 with regard to the environmental impact of the proposed action, on information and belief the summary reference to the problem of air pollution in the proposed environmental impact statements does not adequately consider the interrelationship between the construction of more highways, such as the instant project, the Federal Clean Air Amendments of 1970 (Pub. L. 91-604 42 U. S. C. §1857, et seq.), and the increasing air pollution attendant upon urbanization in the Susquehanna Corridor and particularly in areas, such as the Capital Region, where the geographic configuration, in a sense its relationship to a gigantic topographic bowl, by reason of the tendency to climatic inversion concentrate and intensify air pollution to an unacceptable degree.

19. On information and belief, the Clean Air Amendments require each State to attain national primary ambient air quality standards in every part of the State by 1975 in order to protect the public health. In order to reach these standards, each State must promulgate a State implementation plan by February of 1972. The Administrator of the Federal Environmental Protection Agency is required to reject any State plan which will not assure attainment of these standards in the

allotted time.

20. The Federal Act requires that as part of State plans, traffic controls and other measures must be imposed where necessary to assure the required air quality. The Administrator of the Federal agency has already stated, with reference to New York City, that such measures will be required in order to assure healthy air there by 1975. With the number of new highways now being built in the Capital Region, and with the particular geographic configuration of the area, the failure at any point to have considered the impact of the building of still another highway on existing air pollution levels in the corridor, and in the Capital Region, is a further aspect of the failure of defendants to have complied with the requirements of the National Environmental Policy Act of 1969.

AS AND FOR PLAINTIFFS' THIRD CLAIM

21. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8" and "16" above, with the same force and effect as if fully set forth herein and repeated; and further allege:

22. By Section 4(f) of the Department of Transportation Act of 1966, 49 U. S. C. §1653(f) which, as amended, is virtually identical to Section 138 of the Federal-Aid Highway Act of 1968, 23 U. S. C. §138, it is provided as follows:

"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation

lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain and enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

23. Upon information and belief, based upon the summary reference thereto in the form of the "Section 4(f) Determination" which accompanied one of the draft environmental impact statements, the State of New York is not in compliance with the foregoing provisions of the Department of Transportation Act of 1966 and the Federal-Aid Highway Act of 1968 (23 U. S. C. §138) in that it has not undertaken to determine feasible and prudent alternatives to the use of such protected lands, or otherwise to carry out the requirements of the Federal law protecting and preserving the natural beauty of the countryside and of the specified areas through the consequential damage of location such transportation facilities in juxtaposition to protected areas, thus exposing them to the ensuing industrial, commercial and residential development and thereby destroying them by shattering the ecological and historical matrix that give them their unique natural and cultural value. In this larger view of the impact of the Federal law, particularly ludicrous is the effort of highway

planners to verbalize their destruction of these values in terms of "careful horizontal and vertical alignment techniques" culminating in "appropriate landscaping treatment" and "careful design treatments", in a sense, the final solution to protected areas under Section 4(f) of the Federal Act.

24. Construction of the project herein without compliance with the terms of Section 4(f) of the Department of Transportation Act, 49 U. S. C. §1653(f), as amended, and Section 138 of the Federal-Aid Highway Act of 1968, 23 U. S. C. §138, constitutes arbitrary and capricious action by defendants, and is in violation of law. On information and belief, plaintiffs aver that, unless restrained by this Court, defendants will construct the project in violation of law; and further aver that damages to plaintiffs occasioned by such illegal construction will be irreparable.

AS AND FOR PLAINTIFFS' FOURTH CLAIM

25. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8" and "16" above, with the same force and effect as if fully set forth herein and repeated; and further allege:

26. 23 U. S. C. §128, relating to public hearings, provides, insofar as here applicable, as follows:

"§ 128. Public hearings

"(2) Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of,

or going through any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. As amended Pub. L. 90-495, § 24, Aug. 23, 1968, 82 Stat. 828."

27. In implementation of the foregoing the Federal Highway Administration of the Department of Transportation has adopted a policy and procedure memorandum with reference to public hearings and location approval (23 CFR, Sec. 1.38, Appendix A). Insofar as here applicable, with regard to the corridor stage, it is provided in part as follows (Para. 7.c. and d.):

"7. Opportunity for public hearings.

* * *

"c. The opportunity for another public hearing shall be afforded in any case where proposed locations * * * are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect.

"d. The opportunity for a public hearing shall be afforded in each case in which either the State highway department or the division engineer is in doubt as to whether a public hearing is required."

* * *

28. On information and belief, in a number of instances, the State of New York has illegally avoided the requirements of public hearing. Proposed locations have been so changed from those presented in the notices or at the public hearing or hearings with regard to the corridor as to have a substantially different social, economic, or environmental effect; and, on information and belief, no hearing or hearings, as required by law, have been held with regard to such corridor

location or as to such changes in location or locations. Original hearings, on information and belief, have not been held as required under Federal law, and the State of New York has ignored or evaded the requirement of Federal law that such hearings be held. Furthermore, the required environmental impact statement or statements, prepared by the Federal Department of Transportation as required by law, have not accompanied the proposal through the existing agency review process, including the aforesaid public hearings.

29. The failure and refusal of defendants to hold the required hearing or hearings, under the foregoing circumstances and the law, is an abuse of administrative discretion under the law and of the said Policy and Procedure Memorandum in that they have disregarded the requirements of the statute and of their administrative procedures, and of the National Environmental Policy Act, as aforesaid. Upon information and belief, unless enjoined by this Court, the defendant Parker will condemn lands of the plaintiffs and others, advertise and accept bids for the aforesaid project and commence construction thereof, and the defendant Volpe will participate in such acts by the approval thereof, as required by Federal law, and approval of Federal reimbursement in major part of the funds expended; all without compliance with the legal and administrative requirements with regard to the holding of public hearing with regard thereto.

AS AND FOR PLAINTIFFS' FIFTH CLAIM

30. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8" and "15" above,

with the same force and effect as if fully set forth herein and repeated; and further allege:

31. On information and belief, based on Section 103 (e) (1) and (3) of Title 23 of the United States Code, Public Law 90-495, the defendant Volpe has illegally approved the inclusion of the subject project as a part of the national system of interstate and defense highways, for purposes of funding and, unless restrained by this Court, is prepared illegally to disburse Federal funds in connection therewith.

AS AND FOR PLAINTIFFS' SIXTH CLAIM

32. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8" and "16" above, with the same force and effect as if herein fully set forth and repeated; and further allege:

33. By Section 14 of the New York State Transportation Law, with regard to the general functions, powers and duties of the said Department, the Commissioner is charged with the duty of coordinating and developing comprehensive, balanced transportation for the State, to coordinate and assist in the balanced development and operation of such transportation facilities and services in the State, including highway, mass transit, marine and aviation facilities, and to develop policies and proposals designed to help meet and resolve the special problems of urban and commuter transportation in metropolitan areas throughout the State. (Transportation Law, Sec. 14, subds. 1, 2, 3)

34. In addition, by Section 14-a of tge said New York State Transportation Law, added by the Laws of 1968, Chapter 1042, Sec. 2, effective June 22, 1968, the Commissioner is further charged with the responsibility of developing transportation plans and programs to include measures to maintain or enhance the desirable natural characteristics of the land traversed.

35. Construction of the proposed project, as planned, without adequate review and consideration of the facts and in patent violation of the foregoing provisions of the New York State Transportation Law, constitutes arbitrary and capricious action by defendants, and is in violation of applicable New York State law, as aforesaid. On information and belief, plaintiffs aver that, unless restrained by the Court, defendants will construct the project in violation of law; and further aver that damages occasioned by such illegal construction will be irreparable.

AS AND FOR PLAINTIFFS' SEVENTH CLAIM

36. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8", and "16", above, with the same force and effect as if herein fully set forth and alleged; and further allege:

37. By Section 10 of the New York State Environmental Conservation Law, enacted by the Laws of 1970, Chapter 140, Section 2, effective July 1, 1970, it is provided as follows with

reference to the environmental policy of the State of New York:

"§ 10. Declaration of policy.

"The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.

"It shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and concerned individual, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

"It shall further be the policy of the state to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations by:

"a. assuring surroundings which are healthful and aesthetically pleasing,

"b. guaranteeing that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences,

"c. promoting patterns of development and technology which minimize adverse impact on the environment,

* * * ."

38. Construction of the proposed project, as planned, without adequate review and consideration of the facts and in patent violation of the New York State Environmental Conservation Law, constitutes arbitrary and capricious action by defendants, said. On information and belief, plaintiffs aver that, unless

restrained by the Court, defendants will construct the project in violation of law; and further aver that damages occasioned by such illegal construction will be irreparable.

AS AND FOR PLAINTIFFS' EIGHTH CLAIM

39. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "8" and "16" above, with the same force and effect as if herein set forth and repeated; and further allege:

40. By Section 4 of Article XIV of the Constitution of the State of New York, adopted effective January 1, 1970, the policy of the State of New York was declared to be to conserve and protect its natural resources and scenic beauty. Section 4 of Article XIV, insofar as here applicable, provides in part as follows:

"§ 4. The policy of the state shall be to conserve and protect its natural resources and scenic beauty * * *."

41. By virtue of the foregoing, construction of the project is violative of the rights of plaintiffs under Section 4 of Article XIV of the Constitution of the State of New York as well as violative of the rights of plaintiffs under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and of due process under the Constitution of the State of New York.

AS AND FOR PLAINTIFFS' NINTH CLAIM

42. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "15" above, with the same force and effect as if herein set forth and repeated; and further allege:

43. On information and belief, the Susquehanna, Mohawk and Hudson rivers are navigable waters; the streams or water-courses affected by the proposed construction are either navigable, such as the Susquehanna River itself, or are tributary to the aforesaid navigable waters.

44. On information and belief, based on Sections 401, 403, 407, 411, 491, and 525 of Title 33 of the United States Code, relating to havigation and navigable waters, the defendants have erected or are preparing to erect bridges, dams, dikes, and causeways in such navigable waters, to obstruct such navigable waters generally in terms of excavation and filling in, and to throw, discharge, and deposit, and to cause, suffer, and procure to be thrown, discharged, and deposited refuse matter into such navigable waters, and into tributaries thereof, and to deposit, cause, suffer, and procure to be deposited material of divers kinds in places on the bank or banks of such navigable waters, and their tributaries, where the same shall be liable to be washed into such navigable waters, all without following the procedures therein set forth and required to be followed, and in violation of the requirements of the National Environmental Policy Act of 1969, as hereinbefore set forth, and as follows.

45. As a further element of the failure of defendants adequately to consider and report under the terms of the National

Environmental Policy Act of 1969 with regard to the environmental impact of the proposed action, on information and belief the summary reference to the problem of the effect of such massive construction upon the remaining natural and scenic qualities of the upper reaches of the Susquehanna River, and of the other tributary streams and watercourses involved, does not adequately consider the interrelationship between the construction of more highways, such as the instant project, and the protection of national values with reference to the preservation and conservation of water resources, and of the nation's rivers and streams, such as the Upper Susquehanna, here at stake.

Plaintiffs aver that, unless restrained by this Court, defendants will construct the project in violation of law; and further aver that damages to plaintiffs occasioned by such illegal construction will be irreparable. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment as follows:

A. Declaring that the construction of the proposed project is illegal and in violation of law until the defendants have first complied with the terms of the National Environmental Policy Act of 1969, Pub. L. 91-190, 83 Stat. 852, 42 U. S. C. §4331, et seq., with regard to taking required measures to bring the authority and policies of the Department of Transportation into conformity with the intent, purposes, procedures of said Act, with regard to filing of a sufficient environmental impact statement by the responsible Federal official respecting said project under Section 102(2)(C) of the said Act, and with regard to causing same to accompany the proposal through the existing agency review process.

B. Declaring that the construction of the proposed project is illegal and in violation of law until the defendants have first complied with the terms of the National Environmental Policy Act of 1969, with regard to reporting on the interrelationship between the construction of more highways, such as the instant project, the Federal Clean Air Amendments of 1970, and the increasing air pollution attendant upon urbanization in the Corridor and particularly with reference to the Capital Region and the problem of climatic inversions therein, all relating to air pollution, as well as with regard to alternatives to the proposed action.

C. Declaring that the construction of the proposed project is illegal and in violation of law until the defendants have first complied with Section 4(f) of the Department

of Transportation Act of 1966, 49 U. S. C. §1653(f), as amended, and Section 138 of the Federal-Aid Highway Act of 1968, 23 U. S. C. §138, with regard to the preservation of the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

D. Declaring that the construction of the proposed project is illegal and in violation of law until the defendants have first complied with the terms of 23 U. S. C. §128, relating to public hearings with regard to Federal-Aid highway projects, and with the necessary Federal procedures relating thereto by reason of the requirements of the National Environmental Policy Act of 1969.

E. Declaring that the proposed project does not qualify as a part of the national system of interstate and defense highways, or for disbursement of Federal funds in implementation of the construction thereof; without prejudice to the right of the State of New York to make appropriate application under such other provisions of Federal law as may be available for assistance in construction of the project.

F. Permanently enjoining the defendant Parker and all of his employees, agents, servants, attorneys, or other persons acting for the said defendant Parker from proceeding with the condemnation of lands and other properties for or in connection with the proposed project unless and until there has been compliance with the hearing and environmental requirements

of Federal law, and a determination by the Court that defendants' planning in all respects complies with law.

G. Permanently enjoining the defendant Parker and all of his employees, agents, servants, attorneys, or other persons acting for the said defendant Parker from proceeding with construction of the proposed project (necessary interim planning excepted) unless and until there has been full compliance with law, as aforesaid.

H. Permanently enjoining the defendant Volpe and all of his employees, agents, servants, attorneys, or other persons acting for the said defendant Volpe from disbursing or permitting the disbursement of any funds in connection with the construction of the aforesaid project (necessary interim planning excepted) or issuing any approvals or permits in connection therewith not in accordance with law.

I. Declaring construction of the project, under the laws of the State of New York as here applied, to be violative of the rights of plaintiffs under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and under the Fifth and Ninth Amendments thereto.

J. Declaring that the construction of the proposed project is illegal and in violation of law to the extent that the planning thereof is arbitrary and capricious on the basis of the facts and of Sections 14 and 14-a of the Transportation Law of the State of New York, final relief to be deferred

until the conclusion of the necessary hearing or hearings under Federal law and further study and report to be made in accordance with the requirements of the National Environmental Policy Act of 1969.

K. Declaring that the construction of the proposed project is illegal and in violation of law to the extent that the planning thereof is arbitrary and capricious on the basis of the facts and the Environmental Conservation Law of the State of New York, final relief herein to be deferred until the conclusion of the necessary hearing or hearings under Federal law and the further study and report to be made in accordance with the requirements of the National Environmental Policy Act of 1969.

L. Declaring construction of the project, under the laws of the State of New York as herein applied, to be violative of Section 4 of Article XIV of the Constitution of the State of New York, and as violative of the rights of plaintiffs to due process under the said Constitution.

M. Declaring that the construction of the proposed project is illegal and in violation of law until the defendants have first complied with the terms of 33 U.S.C. §§ 401, 403, 407, 491, 525, and related requirements with regard to navigation and navigable waters, and with the necessary Federal procedures relating thereto by reason of the requirements of the National Environmental Policy Act of 1969.

N. Granting plaintiffs such preliminary and interlocutory relief, pending the entry of final judgment in this action, as may be proper, as well as costs and disbursements and such other and further relief which as to the Court may seem just and proper.

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WILLIAM HOPPEN
GEORGE V. PALMER,
- Of Counsel.

VERIFICATION

STATE OF NEW YORK)
)
 COUNTY OF ALBANY) SS.:

RALPH ROSENTHAL, being duly sworn, deposes and says that deponent is the Chairman of the Capital Region Citizens Committee, one of the plaintiffs herein, an unincorporated association named in the within action; that deponent has read the foregoing complaint and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent because plaintiff, Capital Region Citizens Committee, is an unincorporated association. Deponent is an officer thereof, to wit, its Chairman. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Reports of public statements by defendants which deponent believes to be true, information from public officials and officers of organizations knowledgeable of the facts, and matters of public record.

Ralph Rosenthal
Ralph Rosenthal

Sworn to before me this

11th day of MAY 1972.

Herbert A. Posner
Herbert A. Posner
 Notary Public

HERBERT A. POSNER
 Notary Public, State of New York
 No. 41-8115450 - Queens County
 Certificate filed in Queens County
 Term Expires March 30, 1978

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAPITAL REGION CITIZENS COMMITTEE,
THE RICHMOND HILL PROPERTY OWNERS COMMITTEE,
NEW YORK STATE COMMISSION FOR SAFE TRANSPORTATION - N. Y. STATE COST,
TOWN OF ROBTINHAM,
TOWN OF PRINCETON,
ST. FRANCIS COUNCILLARY HALL ASSOCIATION, INC.,
c/o/a WIGGINS OF ST. JOHN,
JOHN W. KENNEDY,
CHRISTIE and JANE SHYER,
JOHN K. and HENRY E. ALBERSHOFF and
GARRETT J. and ELLA M. ALBERSHOFF,
WILLIAM F. and WILMA SCHUMPF,
ARTHUR W. and JANICE SCOTT,
ROBERT G. and HARRY LEU SAWYER, and
DANIEL T. and DORIS SEIF,

Plaintiffs,

-against-

ANSWER

JOHN A. VOLPE, Secretary of Transportation of the United States;
GERALD D. LOVE, Regional Federal Highway Administrator of the Bureau of Roads, United States Department of Transportation;
ROBERT E. KIRBY, Division Engineer of the Bureau of Roads, Federal Highway Administration, United States Department of Transportation;
THEODORE W. PARKER, Commissioner of the Department of Transportation of the State of New York; and,
CHARLES L. CANNON, Regional Director, New York State Department of Transportation, Region 1,
And each and every one of the foregoing individually as well as in his designated official capacity,

Defendants.

Defendants, John A. Volpe, Gerald D. Love and Robert E. Kirby, by their attorney James M. Sullivan, Jr., United States Attorney, in and for the Northern District of New York, James M. Cullum of Counsel, for their Answer to the Plaintiffs' Complaint state as follows:

AS AND FOR PLAINTIFFS' FIRST CLAIM

1. ADMIT the allegations contained in paragraph 9.
2. DENY the allegations contained in paragraphs 2, 4, 11, 12, 13, 14, 15 and 16.

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3. ADMIT the allegations contained in paragraph 1, except that they deny that part which reads, "There is an actual controversy that exceeds \$10,000 exclusive of interest and costs."

4. ADMIT the allegations contained in paragraph 8, except that they deny that part which reads:

"No specific mention is made by the State, in its report of planning, of the interrelationship between the proposed construction and a proposed 357-mile proposed developmental expressway across the states of New York, Vermont, New Hampshire and Maine, with its terminus at Amsterdam, New York and Calais, Maine, the so-called Northern New England Expressway; or of the proposed interconnections beyond Binghamton; or of the effect of the proposed construction upon the already deteriorating rail facilities of the Susquehanna Corridor. A corridor public hearing was held on May 27, 1970, with regard to the 20 mile segment encompassing the northern terminal section in the Capital District; other corridor public hearings were or should have been held prior to that date with regard to other sections of the proposed construction, although some required so to be held, were not; the State of New York has not complied with the requirements of Federal law in connection with the holding of public hearings. Proposed locations, in a number of instances, have been changed from those specified in the notices in such a way as to have a substantially different social, economic, or environmental effect, but no original or new public hearings have been held."

5. ADMIT the allegations contained in paragraph 7, except that they deny those parts which read, "Gerald D. Love and Robert E. Kirby" and "Bureau of Roads."

6. ADMIT that part of paragraph 5 which reads, "Plaintiffs Town of Rotterdam and Town of Princetown are municipal corporations existing under the laws of the State of New York" but deny knowledge or information sufficient to form a belief as to the remainder of said paragraph.

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- 3 -

7. DENY the allegations contained in paragraph 10, except that part which correctly states the provisions of Title 42, United States Code, Section 4332(2)(C).

8. DENY knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 3 and 6.

AS AND FOR PLAINTIFFS' SECOND CLAIM

9. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

10. DENY the allegations contained in paragraph 18.

11. DENY the allegations contained in paragraph 19 except that they admit the allegations contained in the first sentence thereof.

12. DENY the allegations contained in paragraph 20 except that they admit that part which reads, "The Federal Act requires that as part of State plans, traffic controls and other measures must be imposed where necessary to assure the required air quality."

AS-AND FOR PLAINTIFFS' THIRD CLAIM

13. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

14. ADMIT the allegations contained in paragraph 22.

15. DENY the allegations contained in paragraph 23 and 24.

AS AND FOR PLAINTIFFS' FOURTH CLAIM

16. Repeat and reallege each and all of the allegations contained in paragraph "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

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17. ADMIT the allegations contained in paragraph 26.

18. DENY the allegations contained in paragraphs 28 and 29.

19. ADMIT the allegations contained in paragraph 27 except that part which reads, "Insofar as here applicable."

AS AND FOR PLAINTIFFS' FIFTH CLAIM

20. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

21. DENY the allegations contained in paragraph 31.

AS AND FOR PLAINTIFFS' SIXTH CLAIM

22. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

23. ADMIT the allegations contained in paragraph 33.

24. DENY the allegations contained in paragraph 35.

25. ADMIT that the defendant Parker has responsibilities pursuant to New York State Transportation Law, Section 14-a, referred to in paragraph #34 of the Complaint, but aver that the responsibility is to cooperate and consult with the Commissioners of Agriculture and Markets, Conservation and Health and the Board of Trustees of the New York State Historic Trust in developing transportation plans and programs to maintain or enhance the desirable natural characteristics of the land traversed.

AS AND FOR PLAINTIFFS' SEVENTH CLAIM

26. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

- 5 -

27. ADMIT the allegations contained in paragraph 37.

28. DENY the allegations contained in paragraph 38.

AS AND FOR THE PLAINTIFFS' EIGHTH CLAIM

29. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

30. ADMIT the allegations contained in paragraph 40.

31. DENY the allegations contained in paragraph 41.

AS AND FOR THE PLAINTIFFS' NINTH CLAIM

32. Repeat and reallege each and all of the allegations contained in paragraphs "1" through "8" of the first count of this Answer with the same force and effect as if herein fully repeated.

33. DENY the allegations contained in paragraphs 44 and 45.

34. DENY knowledge or information sufficient to form a belief as to paragraph 43.

35. Notwithstanding the foregoing paragraphs of this Answer it is hereby alleged that paragraphs 1, 9, 10, 19, 22, 26, 27, 33, 34, 37 and 40 of the Complaint contain conclusions of law which do not require an answer and with which the defendants do not necessarily agree.

AFFIRMATIVE DEFENSES

FOR A FIRST SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

The plaintiffs lack capacity to sue in this action.

- 6 -

FOR A THIRD SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

The Court does not have jurisdiction of the
persons of the defendants Volpe, Love or Kirby.

FOR A FOURTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE

The Court lacks jurisdiction of the subject
matter of this action.

WHEREFORE, defendants demand that the Complaint
herein be dismissed, together with the costs and dis-
bursements of this action.

DATED: August 22, 1972

JAMES M. SULLIVAN, JR.
United States Attorney

James E. Cullen
BY JAMES E. CULLEN
Assistant U. S. Attorney
Northern District of New York
U. S. Post Office & Court House
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Attorney General of the
State of New York
Attorney for the Defendants,
Parker and Carlson
Office and Post Office Address
The Capitol
Albany, New York 12224

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CAPITAL REGION CITIZENS COMMITTEE,
THE HIGHMONTVILLE HOUSING OWNERS COMMITTEE,
NEW YORK STATE COALITION FOR SANE TRANSPORTATION -
N. Y. STATE COST,
TOWN OF BOTTLEDAM,
TOWN OF FRIEDTOWN,
ST. FRANCIS CONGREGATION HALL ASSOCIATION, INC.,
a/k/a KNIGHTS OF ST. JOHN,
JOHN W. KESSEBERG,
CHESTER and JUNE SNATER,
JOHN K. and MARY E. ALDERSHOFF and
GARLAND J. and BELLA M. ALDERSHOFF,
WILLIAM F. and WILMA SCHULTZ,
ARTHUR W. and JANICE SCOTT,
MICHAEL G. and MARY LOU SAWYER, and
DANIEL T. and LORIS SEIP,

ANSWER
TO
COMPLAINT

CIVIL ACTION
FILE NO.
72-CV-234

Plaintiffs,

- against -

JOHN A. VOLPE, Secretary of Transportation of
the United States;
GERALD P. LOVE, Regional Federal Highway
Administrator of the Bureau of Roads,
United States Department of Transportation;
ROBERT E. KIRBY, Division Engineer of the
Bureau of Roads, Federal Highway Administration,
United States Department of Transportation;
THEODORE W. PARKER, Commissioner of the Department
of Transportation of the State of New York; and,
CHARLES E. CARLSON, Regional Director, New York
State Department of Transportation, Region 1,
And each and every one of the foregoing in-
dividually as well as in his designated official
capacity,

Defendants.

Defendants, Theodore W. Parker and Charles E. Carlson,
by their attorney, Louis J. Lefkowitz, Attorney General of the
State of New York, answering the complaint herein:

1. Deny the allegations contained in paragraphs
numbered "7", "10", "17", "19", "21", "22", "25", "26", "30",
"32", "33", "36", "37", "39", "40" and "42".

2. Deny the allegations contained in paragraphs
numbered "2", "4", "11", "13", "14", "15", "16", "18", "23",
"24", "28", "29", "31", "35", "38", "41", "44" and "45".

3. Deny information sufficient to form a belief as to the allegations contained in paragraphs numbered "3" and "6".

4. Admit all of paragraph numbered "1", except that part which reads, "There is an actual controversy that exceeds \$10,000.00 exclusive of interests and costs."

5. Admit all of paragraph numbered "5", except that part which reads, "and is the owner of real property in the area of the proposed construction."

6. Admit all of paragraph numbered "7", except that part which reads, "GERALD D. LOVE and ROBERT E. KIRBY."

7. Admit all that part of paragraph numbered "8" which reads:

"8. Upon information and belief, the State of New York through its Department of Transportation is preparing to construct a highway, paralleling existing Route 7 and the now deteriorating Delaware & Hudson Railroad tie between Binghamton and Albany, some 130 miles in length. The purposes of this construction, as set forth by the New York State Department of Transportation, are to promote economic growth and development along the Route 7 corridor, to decrease travel time and cost, to increase safety, comfort and convenience of highway travel, and to complete a missing connection in the Interstate Highway System, to facilitate long-distance travel. In addition to the transportation objectives, regional development objectives are also detailed by the State in terms of the relation between the proposed construction and the economic vitality of the region, including the State's Appalachian program, and also to promote the development of the Susquehanna Valley and of the Cobleskill-Schoharie (sic) Appalachian growth areas, which are located within or adjacent to the corridor. . . . and

" . . . A corridor public hearing was held on May 27, 1970, with regard to the 20 mile segment encompassing the northern terminal section in the Capital District; . . ."

but deny the remainder thereof.

- 3 -

8. Admit all of paragraph numbered "12", except the word "purported" wherever it appears therein.

9. Deny all of paragraph numbered "20", except that part which reads, "The Federal Act requires that as part of State plans, traffic controls and other measures must be imposed where necessary to assure the required air quality."

10. Admit all of paragraph numbered "27", except that part which reads, "Insofar as here applicable," and aver that subparagraphs "7.a.", "7.b." and "7.e." of Policy and Procedure Memorandum 20-8 (PPM 20-8), which are omitted from paragraph numbered "27", also are applicable hereto.

11. Admit that the defendant Parker has responsibilities pursuant to State Transportation Law, §14-a, referred to in paragraph numbered "34" of the complaint, but aver that the responsibility is to cooperate and consult with the Commissioners of Agriculture and Markets, Conservation and Health and the Board of Trustees of the New York State Historic Trust in developing transportation plans and programs to maintain or enhance the desirable natural characteristics of the land traversed.

FIRST DEFENSE

12. Plaintiffs lack standing to maintain the action.

SECOND DEFENSE

13. The Court lacks jurisdiction of the subject matter of the action.

THIRD DEFENSE

14. The Court lacks jurisdiction of the person of defendants Parker and Carlson.

FOURTH DEFENSE

15. The complaint fails to state a claim against defendants upon which relief can be granted.

WHEREFORE, defendants demand that the complaint herein be dismissed, together with the costs and disbursements of this action.

DATED: Albany, New York
August 4, 1972

Signed:

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
Parker and Carlson
Office and P. O. Address
The Capitol
Albany, New York 12224

By s/ Douglas S. Fales, Jr.
DOUGLAS S. FALES, JR.
Assistant Attorney General

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Albany, New York 12207

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
CAPITAL REGION CITIZENS COMMITTEE, et al., :
Plaintiffs, : Civil Action
-against- : File No.
JOHN A. VOLPE, Secretary of Transportation : 72-CV-254
of the United States, et al., : AFFIDAVIT
Defendants. :
-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

HERBERT A. POSNER, being duly sworn, deposes and says:

1. That he is a member of the Bar of the State of New York, the attorney for plaintiffs, and is familiar with the facts of the within proceeding.

2. This affidavit is filed in opposition to the motions of defendants for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for other relief, and is limited to the point that defendants have illegally approved the inclusion of the subject project as a part of the national system of interstate and defense highways for purposes of funding and, unless restrained by this Court, are prepared illegally to disburse Federal funds in connection therewith and in violation of law.

3. By the Federal-Aid Highway Act of 1968 (P.L. 90-495, § 14(b), 23 U.S.C., § 103(a)(3)), a total of 1,500 miles

was added by Congress to the Interstate System, in the following terms:

"(3) In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System."

* * *

4. Insofar as here applicable, and as referred to above, the Congressional standards with reference to inclusion of projects within the Interstate System are as follows (43 U.S.C., § 103(e)(1)):

"(e)(1) The interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense and, to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and Republic of Mexico."

* * *

Paragraph "(2)" of subsection "(e)" was added by Public Law 90-238, 90th Congress, approved January 2, 1968, and provided for the addition of 200 miles to the Interstate System. It can be

seen, thus, that the addition, later in that year of the 1,500 miles authorized in paragraph "(3)" represented what might be termed a third generation of Interstate Highways, nevertheless subject to Congressional restrictions set forth in the original authorization, that is, "to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense and, to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and Republic of Mexico."

5. Indeed, the intent of Congress with regard to the 1968 1,500-mile addition to the Interstate System is even more specific in terms of the limited purposes of that addition to the Interstate System. The Court can take notice of the legislative history of the 1968 Interstate legislation in terms of Conference Report No. 1799, July 25, 1968, to accompany S.3418, prepared by the Managers on the Part of the House at the Conference between the House and the Senate. With regard to the eventually approved 1,500-mile extension of the Interstate System, it was reported as follows (1968 U.S. Code Cong. and Adm. News, pp. 3535-3536):

"INTERSTATE SYSTEM ADJUSTMENTS

"Section 14 of the House amendment authorized an additional 3,000 miles on the Interstate System.

"The Senate bill contained no comparable provision.

"The conference substitute authorizes an additional 1,500 miles on the Interstate System for the purpose of improving the efficiency and service of that system.

"The Interstate System now stands at 41,200 miles. All of it has been designated, and less than 15 miles remain for making adjustments of any kind.

"The system was laid out in 1947 to connect principal centers of population. At that time and when the system was authorized in 1956, no provision was made for flexibility which would make it possible to meet the tremendous changes that have taken place in population and development in many sections of the Nation. As a result, there are several cities of more than 100,000 population that are not now on the Interstate System. In addition, because of these and other factors, there are critical gaps in the system which will prevent its effective functioning as the Nation's major continuous interconnected highway network. No one suggests that the 41,000 miles are not needed where they are now planned and firmly committed. By the same token, virtually everyone recognizes that these serious missing segments must, in many instances, be built in the very near future if the system's ability to handle its traffic is to be maintained.

"The original mileage limitation and the now vastly changed conditions have led to segments which constitute critical gaps between major cities (for example, Tampa, St. Petersburg, Miami, and approximately 87 miles to complete the Springfield-Decatur-Champaign expressway in Illinois), and in some instances to the perpetuation of 'killer' roads in those corridors (U.S. 41 south out of Chicago and through Indiana); to missing segments of beltways (the 16-mile missing quadrant of the Fort Worth circumferential and 5-mile

extension of I-29 to complete the Hartford, Conn., circumferential); to unconnected mileage (6 miles in Mobile, Ala., extending from I-10 to I-65 and 28 miles to complete location of I-82 in southeastern Washington); to the failure to include State capitals on the system (Raleigh, N.C., and Carson City, Nev.); to absent and essential radial and connector mileage (14 miles in Massachusetts extending I-295 from I-95 to the Rhode Island State line and 12 miles to complete gaps in Oklahoma City and Tulsa, Okla.); to missing segments in areas that carry very heavy and still increasing direct defense traffic in addition to excessive nondefense traffic (32 miles to extend I-95 in Dade County, Fla., southward from its present terminus through Homestead, and 20 miles in Dade County, Fla., extending I-75 from the East-West Expressway to an intersection with I-95 at the western boundary of Homestead Air Force Base), and so on.

"The conference substitute therefore authorizes the addition of 1,500 miles to the system. This mileage, however, is authorized to be used to meet the kind of critical missing link situation described above." * * *

6. In addition, it is appropriate that the Court consider the foregoing in pari materia with the Appalachian Regional Development Act of 1965, Public Law 89-4, 89th Congress, approved March 9, 1965, and the legislative history thereof (1965 U.S. Code Cong. and Adm. News, pp. 1382, 1383, 1384, 1401, 1402, 1413, 1414, 1415-1416), particularly to the extent that it reflects, as happened here, Congressional concern that the Appalachian development program would impinge upon and undesirably affect oth-

or aspects of the national highway system.

The manner in which this was done was circuitous, since the State of New York itself originally was not included within the scope of the act. However, by force of the New York study proviso, it was subsequently included, and the counties of Chautauqua, Cattaraugus, Allegany, Steuben, Schuyler, Cehmung, Tompkins, Tioga, Cortland, Broome, Chenango, Otsego, Delaware, and Schoharie, the Southern Tier, were included in planning under the Federal act.

In October 1968, as part of the New York State Appalachian Program, a development plan for the region, the State of New York reported on Appalachian Highway Development Corridors (Abstract of New York State Appalachian Program, A Development Plan, Appalachian Regional Commission, Charles T. Lanigan, New York State Representative, pp. 30-33). In particular, and insofar as here relevant, it was reported as follows with regard to Appalachian Highway Development Corridors (id., pp. 30, 32):

"As an initial program to develop the entire Appalachian Region, major emphasis is being given to a network of high-speed controlled access highways to provide for the movement of goods, raw materials, labor, services and tourists. Technological advances in highway construction have now made it possible to build the net work despite the topographic impediments of the Region.

"Due to the locational advantages offered by New York's 14 Appalachian counties, a strong basis for development exists; however, in order to take advantage of this basic locational factor, a complete highway network serving the intra-regional and inter-regional transportation requirements

must be completed. The minimum system that is necessary to provide the needed service has been planned by the New York State Department of Transportation; and, as the Appalachian Regional Development Program progresses, it is essential that the proposed corridors be constructed as rapidly as possible.

"During the spring of 1966, an analysis of construction costs of the corridor system for the other 11 Appalachian States was completed, and the resultant data disclosed a disturbing trend. Since the analysis indicates a rapid rise in the cost of developing the proposed highway network, it is imperative that the complete network be approved, funded and moved into the construction phase before it becomes economically impossible to complete the system as it is now planned.

"The New York State Corridor Development Program

"To accomplish its basic objectives, New York has proposed a network of 601 miles of development corridor highways. This proposal includes the construction of a major east-west corridor (The Southern Tier Expressway) to supply a much-needed transportation link to the Midwest, the Eastern Seaboard, and New England, and also a series of north-south development corridors to allow rapid movement of goods, services and labor to manufacturing centers, raw materials to processing and fabrication points, and finished products to market.

"Under the Appalachian Regional Development Act, the Southern Tier Expressway, from Binghamton to the Chautauqua County line in the vicinity of Findley Lake, and a route

south from Elmira toward Williamsport, (Pennsylvania), have been designated as Appalachian Development Corridor Highways and will receive Appalachian funding.

"A transportation bond issue recently authorized by the voters of New York State will supply additional funds to accelerate the design and construction of most of the other highways needed to provide a complete highway transportation network for the Appalachian Region of New York State. The bond issue will provide approximately \$606 million for the highway program in the State's 14 Appalachian counties.

"A brief description of the proposed Appalachian highway development corridor network (as shown on the map on page 31) follows:

* * *

"Corridor V--State Route 7

"Probably the most important corridor, in terms of connecting the northern states of Appalachia to a rich outside market, is the proposed corridor V which will follow the general alignment of State Route 7 from Binghamton to the Capital District of New York State. With the completion of this corridor, three states--Ohio, Pennsylvania and New York--would enjoy a direct controlled access route to downtown Boston and the markets of New England. This route is now open from Schenectady, New York, to Boston, and the Route 7 link would complete the network, putting the Southern Tier of New York State, Eastern Ohio and Northern Pennsylvania in close touch with New England markets and the Five-State Development Region being set up under Title V of the Economic Development Act.

"The corridor also would serve the Binghamton-Owego-Susquehanna, the Hancock-Deposit, the Susquehanna Valley and the Cobleskill-Schoharie growth areas as well as other communities with growth potential in the eastern part of New York State's Appalachian Region."

* * *

A map of the proposed Appalachian Expressways, including the Route 7 proposal, is attached as Exhibit "A".

7. In addition, and before proceeding in more detail to an examination of the extent to which, if any, the proposed project conforms to the criteria for inclusion within the Interstate System and, in particular, the "critical missing link" standard of the 1968 extension, it will be helpful to consider a further aspect of the genesis of this particular project in terms of its relation to the so-called Northern New England East-West developmental highway, or the Northern New England Expressway. Maps of the proposed route, published by the Montgomery County (New York) Department of Planning and Development and by Time Magazine, respectively, are attached as Exhibits "B" and "B-1".

8. It is clear that New York State's original proposal for Federal funding of this project was in terms of its serving as a link to this Northern New England Expressway (Exhibit "1" to Robert E. Kirby's Affidavit, p. 2 and addendum). This was made explicit by the map attached to that Exhibit, as well as the designation (p. 2) from "Binghamton to Vermont (vic. Bennington)", as well as by the route description at the outset of

the appendix to the Exhibit, as follows:

"SUSQUEHANNA EXPRESSWAY

"Route Description

"This proposed Interstate route addition would begin at an interchange with Interstate Route I-81 and proceed in a general northeasterly direction along the Route 7 corridor to Vermont. This proposal is coordinated with the submission from our adjoining states who are providing for a continuation of this route along a general easterly pattern along the Route 9 corridor to Keene, then east near Manchester terminating near Portsmouth, New Hampshire, at an interchange with Interstate Route I-95."

★ ★ ★

At no point in the administrative justification for the project was there any reference to the critical missing link criterion of the Congressional authorization.

9. It should also be noted that in Instructional Memorandum 10-3-68, dated August 28, 1968 (Exhibit "2" to Robert E. Kirby's Affidavit, p. 2) there is passing reference to the critical missing link or critical gap criterion, but this is subsequently glossed over in terms of the following reporting requirement (Exhibit "2", supra, p. 3):

"d. an explanation of the critical nature of the proposed new mileage, including critical time problems relating to scheduling of construction;"

It is submitted that this interpretation by the Federal Highway Administration is a patent misconstruction of the intent of Congress and in no way complies with the critical missing link criterion, as exemplified by the instant project.

10. Indeed, what kind of a "missing link" is involved here, and it does not involve the Interstate System at all (except to the extent, as here that Federal funding is secured under the guise of the Interstate System), is certainly not that envisioned by Congress when it passed the 1,500-mile extension in 1968. A careful examination of the attached map of the Interstate System as of June 30, 1972 (Exhibit "C") and of the alignment of the particular proposed project (I-88) establishes that it is the missing link of nothing that appears on the map itself. It touches, at its ends, two Interstate Highways (I-81 and I-90), but beyond that neither the direction of the alignment nor the existence of compatible continuing Interstate corridors indicates that this particular proposal was or is anything more than an attempt by New York State to pick up 90-10 Federal funding for a road that is primarily of local rather than of Interstate significance. This, in effect, is the substance of the memorandum of the New York State Department of Transportation, dated February 10, 1969, in support of the bill (Exhibit "D"):

"February 10, 1969

"MEMORANDUM in support of Department of Transportation
Legislative Proposal #52 - 1969

"1. Purpose of bill: To amend Section 340-a of the Highway Law to establish a new Interstate Route known as Interstate Route 503 on the State Highway System.

"2. Summary of provisions of bill: The subject bill would designate a new Interstate Route 503 beginning from a point on Interstate Route 505 in or near the City of Binghamton, thence continuing generally northeasterly to a connection with Interstate Route 502 in the vicinity of Latham.

"3. Justification for bill: The Federal Aid Highway Act of 1968 authorized the addition of 1500 miles to the Interstate System nationally and New York, in accordance with the guidelines contained in the Instructional Memorandum from the Bureau of Public Roads, proposed the addition of twenty (20) new routes or extensions. Included in this sub-

mission is the Susquehanna Expressway, which would begin with Interstate Route 505 (I-81) in or near Binghamton and proceed in a generally northeasterly direction along N. Y. Route 7 corridor to the Vermont State line. This proposed Interstate Route was coordinated with the submission made by the State of Vermont to continue the route in a general easterly pattern along Route 9 terminating with I-95 near Portsmouth in New Hampshire. The length of the new route in New York is approximately 156 miles. However, the Federal Department of Transportation approved only the portion consisting of 130 miles extending from Binghamton to a connection with an interstate route east of Schoenectady and estimated to cost a total of \$230,000,000. It is expected that the cost of this additional mileage will be included in the next cost estimate for completing the Interstate System which is scheduled to go to Congress in 1970.

"Chapter 296 of the Laws of 1968 amended Section 340-c of the Highway Law authorizing a new State Expressway, known as the 'Susquehanna Expressway', along the route generally proposed by the instant bill. If the proposed route were constructed pursuant to the authorization contained in Section 340-c, the cost would be shared by the State and Federal Government on a fifty-fifty (50-50) basis. If the route is constructed as an interstate route, as proposed by this bill, the cost will be shared on the basis of ninety (90) percent by the Federal Government and ten (10) percent by the State. In order for the State to avail itself of the ninety (90) percent Federal participation in this project, it is imperative that the proposed route be authorized for construction as an interstate route as provided by this bill."

11. With regard to the East-West Highway across Northern New England, with which the instant project was proposed to link, the Court can take notice that the New England Regional Commission, made up of the six New England governors and a Federal co-chairman, decided to discontinue further work on the East-West Highway and to put emphasis on better mass transportation. The governors of Maine, New Hampshire and Vermont stated that the potential damage to the environment was the major objection,

12. In conclusion, it is apparent that the subject project cannot be justified as connecting the principal metropolitan areas, cities, and industrial centers or, in any appre-

cial sense, serving the national defense; or, for that matter, as otherwise prescribed by Congress for inclusion in the Interstate System by Section 103(c)(1) of Title 43 of the United States Code. Furthermore, and more particularly, it obviously in no way meets the "critical missing link" standard which is integral to the Congressional intent in the passage of the Federal-Aid Highway Act of 1968 (P.L. 90-495, § 14(b), 23 U.S.C., § 103(e)(3)), approving the 1,500-mile addition to the Interstate System, upon the authority of which the legality of the instant project depends.

The fact that the Federal Highway Administration, in the approval of the project, and the Department of Transportation itself, have proceeded in excess of statutory authority, both in their actions vis-a-vis the State highway authorities and in reporting to Congress itself, does not relieve them of full accountability for their actions upon judicial review. Nor does volume of paperwork alone and the official performance of the minutiae of administrative detail in the implementation of the project, as is evidenced by the submissions to the Court, mask or excuse failure to comply with the law or with the intent of Congress. Such illegal action adversely affects the rights of plaintiffs both as taxpayers and as citizens directly affected by the illegal project, now proposed by defendants to be built in a manner contrary to law and in excess of statutory authority.

Reference has heretofore been made to the fact that the 1,500-mile extension in 1968 represented the third generation of Interstate Highways, the first having been the 42,000-mile original authorization, and the second having been the

minor 200-mile extension earlier in 1968. It can now be seen, after a careful review of the facts with regard to its planning and the manner in which it eventually came to be proposed as a part of the Interstate System, that the Susquehanna Expressway (or I-88, as it was termed after its adoption) is not only of the third generation, but illegitimate.

Mentioned before has been the "critical missing link" criterion on the basis of which Congress approved the 1,500-mile extension. It is clear, from a careful review of the facts that went into its planning, that at no time was the Susquehanna Expressway considered to be a part of the Interstate System, to say nothing of its being a "missing link" in it, until it was considered so in connection with the possibility of 90-10 Federal funding for its construction.

Rather, and as the facts of its planning and purpose quite plainly indicate, and its current configuration confirms, its true parentage was either (1) Appalachian, or (2) as part of a developmental highway across Northern New England and New York, a since abandoned project.

Whether the current project, in fact, is a missing link in the Appalachian System, or in the proposed East-West Highway across Northern New England and New York, or even as the stub of a larger developmental highway system to be superimposed upon the Interstate System itself, its inclusion in the Interstate System in no way complies with Section 103(e)(1) or (3) of Title 43 of the United States Code in terms of the Congressional standards for inclusion in the Interstate System; and the actions of de-

fendants in approving its inclusion, accordingly, are arbitrary and capricious and in excess of statutory authority, and are required to be set aside. Unless restrained by the Court, defendants are prepared illegally to disburse Federal funds in connection therewith and to proceed with the illegal construction thereof, to the damage of plaintiffs, and in violation of the law.

Herbert A. Posner

 Herbert A. Posner

Sworn to before me this

24 day of October, 1972.

Kenneth D. Boff

 Notary Public
 KENNETH D. BOFF
 Notary Public
 Qualified in
 Connecticut, expires on 30, 1973

APPALACHIAN EXPRESSWAYS

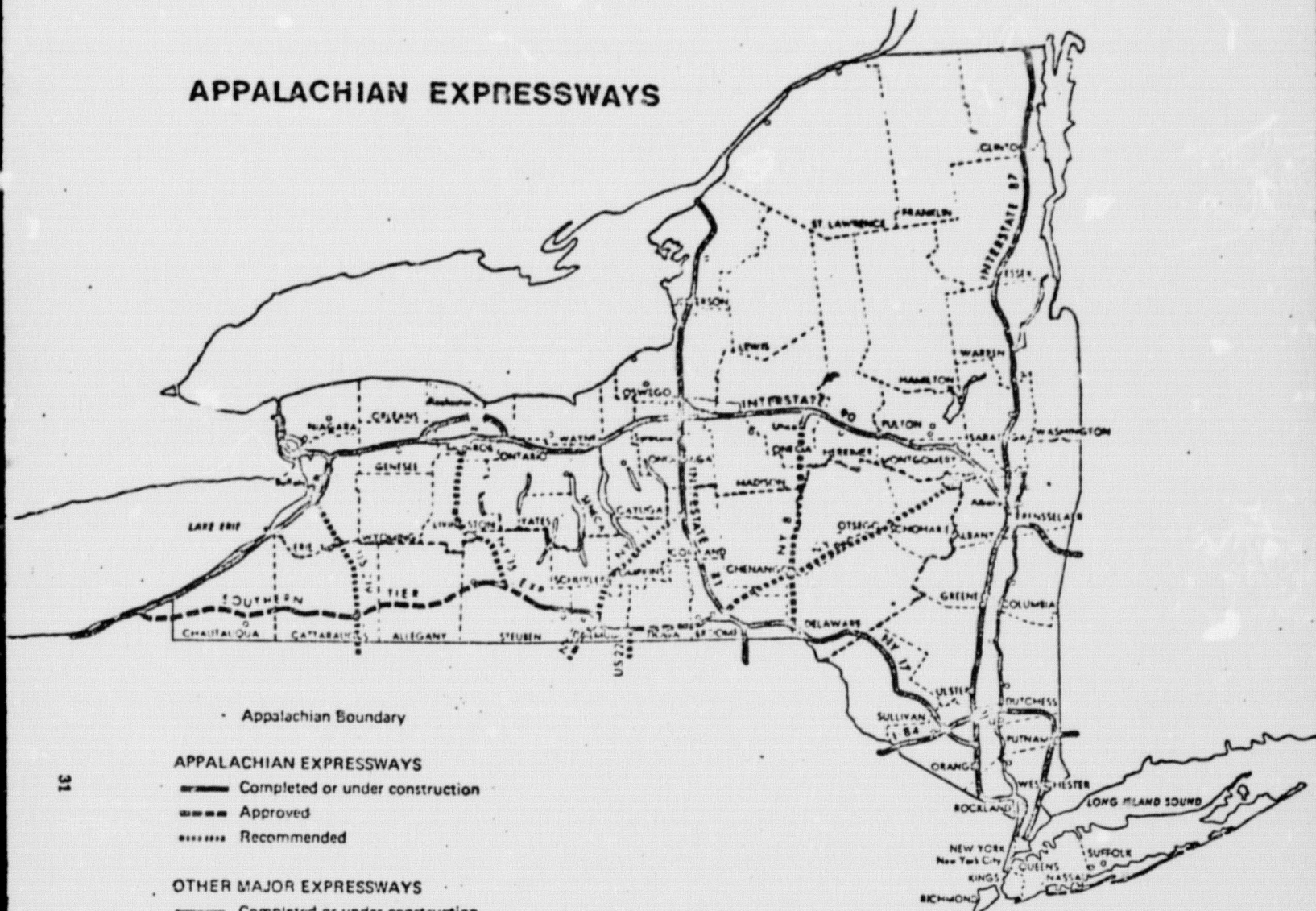


Exhibit "A"
A-59

MONTGOMERY COUNTY
DEPT. OF PLANNING & DEVELOPMENT

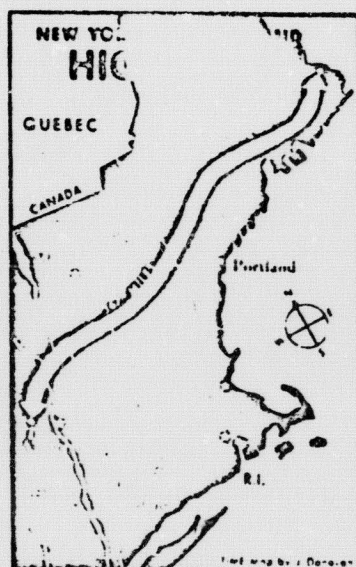
THE EAST-WEST HIGHWAY
GENERAL LOCATION



EXHIBIT "B"

A-60

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HIGHWAYS

A Road to Riches?

Ever since colonial times, the economic links between upstate New York and northern New England have been tenuous. Mountain ranges and rivers cleave the two regions; no major highway has ever been built to run between the far northeastern segment of the U.S. west and south across New York. Now, a volunteer group of business and government executives from New York, Vermont, New Hampshire and Maine is working hard to fill that need. Among the leaders of this unusual bit of interstate cooperation are Bartlett Cram, industrial consultant; Hamilton South, a former Marine brigadier general who is now a vice president of Albany's National Commercial Bank and Trust Co.; and Clifford Barnes, executive vice president of the Rutland, Vt., Chamber of Commerce. Their plan: tie the "Appalachia of New England" together with a 367-mile superexpressway from Amsterdam, N.Y., to Calais, Me.

At its eastern end, the road would provide a gateway into Canada and a link to deepwater ports. At its other end, it would connect with highways leading

to New York City and the Middle West. It would offer faster and cheaper oil deliveries to the communities it served, and should spur business and employment by hurrying the flow of raw materials from New England to other industrial areas. Winding through long stretches of spectacular scenery, the new road could also stimulate tourism. It would reduce driving time from New York City to northern New England resort areas by as much as ten hours.

Satisfied that their plans provide an economic boon to an area that has long been needlessly depressed, the sponsors hope to persuade Washington to incorporate the road into the Interstate Highway System, thus getting the Federal Government to pay 90% of the bill, which is estimated to be from \$650 million to \$1 billion. The highway's boosters, carrying endorsements from their four state Governors, recently took their case to Transportation Secretary John Volpe. If the Government approves funding, construction could begin in two years. "There will be a road there one day," insists General South, "but if we don't do it now, it won't be done properly. Instead, a lot of crummy small highways will be built. That would be a tragedy."

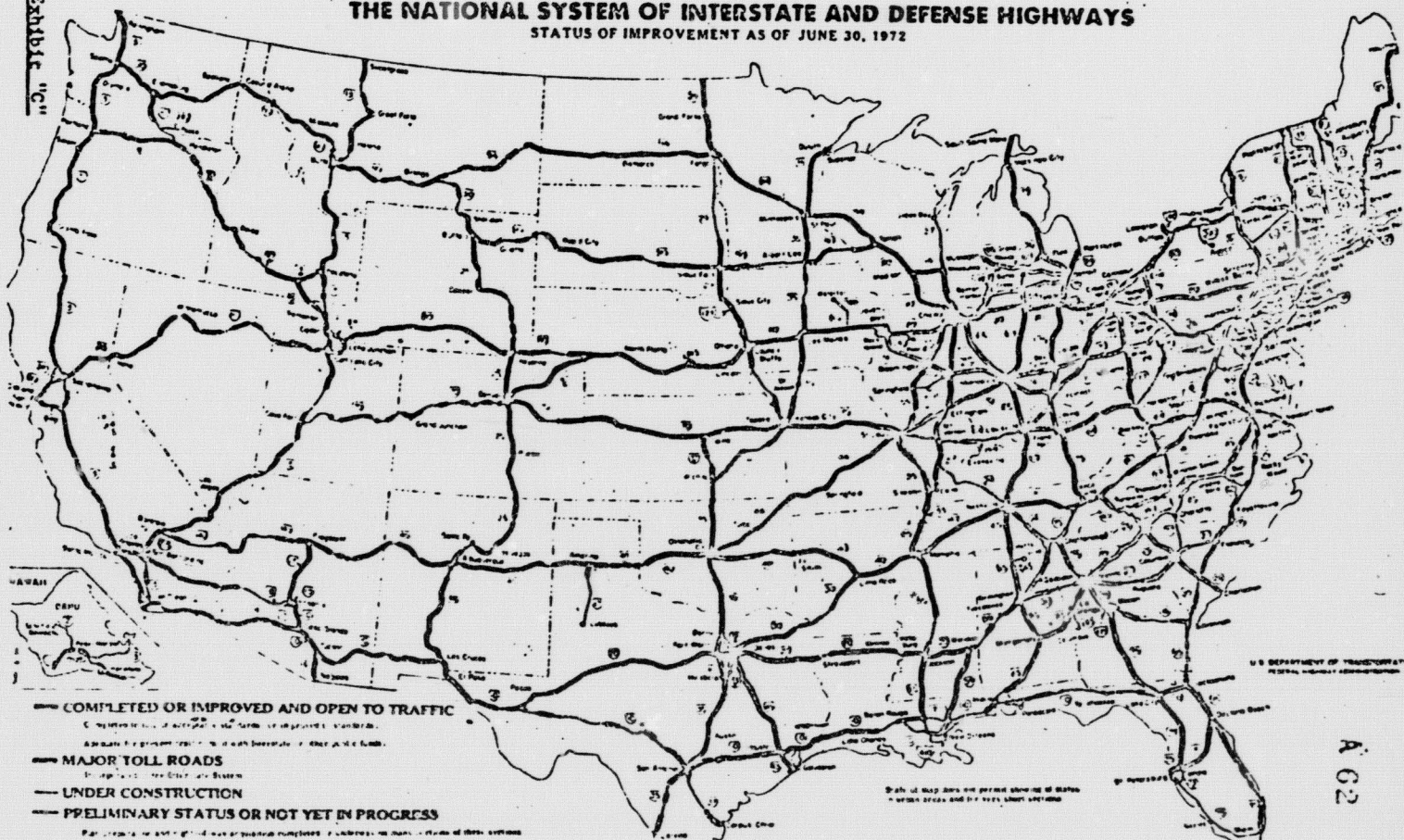
Distributed by:
MONTGOMERY COUNTY
DEPT. OF PLANNING & DEVELOPMENT

TIME, JANUARY 11, 1971

Exhibit "C"

THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

STATUS OF IMPROVEMENT AS OF JUNE 30, 1972



INTERSTATE

A 62

February 10, 1969

MEMORANDUM in support of Department of Transportation
Legislative Proposal #52 - 1969

1. Purpose of bill: To amend Section 340-a of the Highway Law to establish a new Interstate Route known as Interstate Route 508 on the State Highway System.
2. Summary of provisions of bill: The subject bill would designate a new Interstate Route 508 beginning from a point on Interstate Route 505 in or near the City of Binghamton, thence continuing generally northeasterly to a connection with Interstate Route 502 in the vicinity of Latham.
3. Justification for bill: The Federal Aid Highway Act of 1968 authorized the addition of 1500 miles to the Interstate System nationally and New York, in accordance with the guidelines contained in the Instructional Memorandums from the Bureau of Public Roads, proposed the addition of twenty (20) new routes or extensions. Included in this submission is the Susquehanna Expressway, which would begin with Interstate Route 505 (I-81) in or near Binghamton and proceed in a generally northeasterly direction along N. Y. Route 7 corridor to the Vermont State line. This proposed Interstate Route was coordinated with the submission made by the State of Vermont to continue the route in a general easterly pattern along Route 9 terminating with I-95 near Portsmouth in New Hampshire. The length of the new route in New York is approximately 156 miles. However, the Federal Department of Transportation approved only the portion consisting of 130 miles extending from Binghamton to a connection with an interstate route east of Schenectady and estimated to cost a total of \$230,000,000. It is expected that the cost of this additional mileage will be included in the next cost estimate for completing the Interstate System which is scheduled to go to Congress in 1970.

Exhibit "D"

Chapter 296 of the Laws of 1968 amended Section 340-c of the Highway Law authorizing a new State Expressway, known as the "Susquehanna Expressway", along the route generally proposed by the instant bill. If the proposed route were constructed pursuant to the authorization contained in Section 340-c, the cost would be shared by the State and Federal Government on a fifty-fifty (50-50) basis. If the route is constructed as an interstate route, as proposed by this bill, the cost will be shared on the basis of ninety (90) percent by the Federal Government and ten (10) percent by the State. In order for the State to avail itself of the ninety (90) percent Federal participation in this project, it is imperative that the proposed route be authorized for construction as an interstate route as provided by this bill.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
CAPITAL REGION CITIZENS COMMITTEE, et al.,

Plaintiffs,

-against-

JOHN A. VOLPE, Secretary of Transportation
of the United States, et al.,

Defendants.
-----x

Civil Action
File No.
72-CV-254

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM HOPPEN, being duly sworn, deposes and says:

1. That he is a member of the Bar of the State of New York, of counsel to the attorney for plaintiffs, and is familiar with the facts of the within proceeding.

2. This affidavit is filed in opposition to the motions of defendants for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for other relief, with particular reference to the point that defendants have failed to comply with the requirements of the National Environmental Policy Act of 1969 and with regard to the bringing of the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedure of that Act.

Taken up under Point II of the Memorandum of Law are the text of the Act itself, and the decision of the Court of Appeals

for the Second Circuit in Greene County Planning Board v. Federal Power Commission, 455 F.2d 412, construing that act in terms of the agency responsibilities involved. For the purposes of this affidavit, the Court's attention will be directed, in a number of respects, to the substantive inadequacy under the law of the environmental impact statements prepared by the project sponsor, in this case the New York State Department of Transportation, and approved or sought to be approved, illegally according to plaintiffs, by the Federal defendants.

3. For purposes of environmental reporting, the instant project has been divided in what appear to be some eight (8) segments (Affidavit of Memmott, pp. 9-17):

1. PIN 9357.18 -
I-81 to Port Crane, Broome County.
2. PIN 9004.03 -
Port Crane to Sanitaria Springs.
3. PINS 9357.00, part of 9357.02 and 9357.21 -
Sanitaria Springs to the Broome County Line.
4. PINS 9357.02 through 9357.07 -
Broome County Line to the Oneonta West City Line in Chenango, Delaware and Otsego Counties.
5. PIN 9357.20 - Oneonta West City Line to
Main Street, Otsego County.
6. PIN 9357.19 -
Main Street to County Road 47 in Otsego County.
7. PINS 9357.08 through 9357.17 -
County Road 47 to the Schoharie-Schenectady County Line, Otsego and Schoharie Counties.
8. PINS 1357.01 through 1357.04 -
Schenectady and Albany Counties.

4. At the outset, and before reviewing the particular deficiencies of these State-prepared statements in terms of their

failure to comply with either the language or intent of the National Environmental Policy Act, it is plain that the purpose, language, and intent of the National Environmental Policy Act is to require submission on a corridor, regional, or broader basis than the segmented submission procedure of which the above category of environmental impact statements are an illustrative and pertinent example. At the very least, what should be required, and prepared by the Department of Transportation, is a project environmental impact statement that would be broad enough in its scope to assess the overall impact of the proposal in terms of air pollution, noise pollution, and alternatives to the proposed action, and would relate it to the larger elements of State and regional planning, now ignored in the presentation or smothered in a mass of administrative detail and the minutiae of administrative reporting that follows the form to the letter to obscure the substance.

This involves a project of approximately 130 miles from the area of Binghamton to the area of Schenectady, New York; it appears, before its recent inclusion in the Interstate System, to have been part either of the New York system of Appalachian Expressways or, part of a larger East-West Highway that was to have run (before its rejection in New England) across Northern New England and the State of New York. Ideally, such a larger presentation by the Federal Department of Transportation would relate the instant project to such larger transportation and developmental plans. It appears, eventually, to have been incorporated in the Interstate System primarily for reasons of securing 90-10 Federal funding. If, in fact, such was the case, and it so appears from

the New York State Department of Transportation itself, such a non-environmental factor could well be assessed in reporting alternatives to the proposed action, ones hopefully related to the true transportation needs of the region and reflecting consideration of environmental factors, rather than, primarily, the availability of particular Federal funding.

Obviously, by making mince-meat of its environmental impact statements, and cutting up their environmental reporting into a number of rather dis-related statements, New York State has made it rather difficult to see the genesis, the true shape, or the environmental impact of the project as a whole.

At the same time, even by limiting its environmental review to the project itself, which it has not even done, the State has, conveniently enough, donned blinders which effectively interfere with its required environmental consideration of the overall corridor and larger systems of transportation of which this project is but a part. This type of narrow and segmented environmental review of transportation projects does not and cannot meet the requirements of the National Environmental Policy Act, and requires, under the law, a broader and more capable assessment of environmental effect than is capable of being furnished by the project sponsor itself.

With reference to the particular environmental impact statements here in question, prepared by the State of New York, it is our position that they are fatally deficient as a matter of law in that they fail to comply with Section 102(2)(C) aforesaid of the National Environmental Policy Act of 1969 that de-

tailed statement be made with reference to the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, and as further provided in the Congressional framework of environmental consideration which is mandated upon agencies in the performance of their functions. It is our further position that a review of the State's environmental impact statements will establish, for the purposes of this action, that the State's effort in this respect is no more than token compliance, if that, with the National Environmental Policy Act, and reflect no more than an attempted justification, in environmental terms, of a pre-determined course of action to build the project for the reason that 90-10 Federal funding was available to build it in this manner.

For the purpose of this review, and in order to simplify the issues for the Court, we will consider the deficiencies of the particular statement designated above as No. "8" in the series, that relating to "PINS 1357.01 through 1357.04 - Schenectady and Albany Counties." (Exh. 64 to the Affidavit of Memmott, p. 16) On information and belief, the range of information submitted in this particular segmented impact statement is equal to, if not more complete than the other segmented reports, and can fairly be commented on as representative of the State's deficiencies in terms of environmental reporting under the National Act.

Deficiencies of Environmental Impact StatementsAir Pollution

On April 24, 1972, in connection with pending Federal review of the State's environmental impact statements for this project (see Memmott Affid., Exh. 64; above), the Capital Region Citizens Committee made detailed report of the deficiencies therein to Secretary Volpe respecting their inadequacies, particularly with regard of the failure of the State of New York adequately to have investigated and reported upon the following aspects of air pollution:

(A) The relation of New York State's highway planning to its proposed implementation of the Clean Air Amendments of 1970, particularly with reference to existing air pollution levels in the Capital Region and projected increases with planned increased traffic from such highway projects, particularly with regard to the inversion problem; and,

(B) Likewise, the relation of New York State's highway program to its proposed implementation of the Clean Air Amendments of 1970 with regard to the Susquehanna Corridor itself in terms of the increase of automotive-related contaminants in the corridor by reason of the proposed construction, as contrasted with other less-polluting alternatives.

The Citizens Committee renewed, at that time, the suggestion, in terms of what it considered to be the Federal Department of Transportation's responsibility under the National Environmental Policy Act, that the Federal Department of Transporta-

Deficiencies of Environmental Impact Statements, cont.

Air Pollution, cont.

tation itself conduct an impartial and independent survey and investigation with regard to this and other aspects of the environmental impact of the project which are part of the Federal 102 review requirements under the 1969 Act, and as further set forth in the letter itself.

It was also urged that this study, to be conducted by independent experts, if necessary, also include the relation of this proposed construction to rail and public transportation in the Susquehanna Corridor. Stating that what New York State had done in no way satisfied the requirements of study and full evaluation of alternatives under the National Environmental Policy Act of 1969, it was urged that the Federal Department of Transportation undertake this study immediately and under broader sponsorship than that of the Federal Highway Administration itself, both with regard to the alternatives of rail and public transportation in the corridor, and air pollution. A copy of the letter of April 24, 1972, to Secretary Volpe, with regard to air pollution, together with the accompanying documentation, is attached as Exhibit "I" to this affidavit and made a part hereof.

Of particular importance, and referred to in the letter itself at page 15 (Exhibit "I"), was the letter from Mr. George Marienthal, Acting Director of the Office of Federal Activities of the Environmental Protection Administration, dated August 20, 1971, and dealing with reporting requirements on air pollution in connection with a proposed Interstate Highway in Pennsylvania (Exhibit "II"). The importance of this letter is

in terms of the obvious expertise that the Environmental Protection Administration brings to these matters, as contrasted with the more limited experience of State highway departments, and in his recommendation that air pollution is to be assessed in terms of the land uses that can be expected to result from the highway; and, further, that the effect of the highway itself on air quality, plus that stemming from the land uses that can be expected to result from the highway, must be considered in determining compliance with national air quality standards.

In short, not only have the instant statements been prepared by the wrong officials, but they have used standards quite different, and deficient in relation to the standards that would have been used by officials more cognizant of the problems of air pollution. In particular, to continue with the recommendations of the Environmental Protection Administration in this particular matter, Mr. Marienthal said (Exh. "II"):

"The draft statement contends that 'I-78 will have a negative effect on air pollution in the area.' This contention is supported by the statement that 40,000 vehicles per day (VPD) will be diverted off Route 22 to I-78 by 1990. In addition, 'tighter Federal standards by 1974 on automobile manufacturers will further improve air quality.'

"It appears to us that the 40,000 VPD diversion from Route 22 will constitute only a portion of the traffic flow on I-78 by 1990. To permit a determination of the effect on air quality the following factors should be considered in the final environmental impact statement: total vehicular flow per day, mix of vehicles (trucks, buses, passenger automobiles, etc.) meteorological data, design features which may require acceleration or deceleration (for through as for exit and entrance traffic) and predicted land uses for lands adjoining the roadway.

"As indicated in the draft statement, the highway will stimulate commercial, industrial, and housing development. These are considered secondary impacts of the highway project and should be considered when assessing impacts on air and water quality.

"In view of the possible vehicular flows above those estimated in the statement and the apparent failure to fully

Air Pollution, cont.

consider secondary impacts, we cannot agree with the conclusion contained in the statement that 'I-78 will have a negative impact on air pollution in the area.'

"This highway project is located in the Northeastern-Upper Delaware Valley Interstate Air Quality Control Region. Since this project may influence the Regional Implementation Plan to achieve National Air Quality Standards, this possible effect should be fully discussed in the final statement."

* * *

There is no reference, with regard to this latter point, contained in New York State's environmental impact statements on the instant project with regard to the State's current, and now delayed efforts to meet national air quality standards under the Clean Air Amendments of 1970. It is inconceivable that the information with regard to the formulation of the New York State Air Quality Implementation Plan were not available to the Department of Transportation for use in preparation of its environmental impact statement with regard to the subject project, or that it should have been completely ignored by the State of New York in its preparation of the subject statements under the National Environmental Policy Act. Yet that, unfortunately, appears to be precisely the case.

From the foregoing, and a careful reading of the various segmented environmental impact statements (Para. "3", above), it is clear that the State of New York has not adequately investigated and reported with regard to the environmental impact of air pollution resulting from construction of this new highway. This type of superficial and self-serving reporting on the part of State agencies bent on justifying particular projects and special interests underlines the importance of centering such responsibility, as required by the National Environmental Policy Act,

Deficiencies of Environmental Impact Statements, cont.

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Air Pollution, cont.

upon the "responsible Federal official", in this case the Federal Secretary of Transportation, rather than of entrusting the preparation of the necessary statements under Section 102 of the Act to the interested and often, as here, unqualified efforts of the affected State agencies. We have reviewed, and documented, the failure of New York State's environmental impact statements to comply with the National Environmental Policy Act in terms of the relationship of the proposed new highway to the growing problem of air pollution and, particularly, its ignoring of the New York State Air Quality Implementation Plan and the State's lagging efforts to comply with national air quality standards under the Clean Air Amendments of 1970. We will now proceed to an examination of the statements' deficiencies in terms of noise pollution.

Noise Pollution

In the environmental impact statement (Exh. 64 to Affidavit of Memmott), superficial reference is made to projected noise pollution levels and buffering efforts (id., pp. 29-32, 35, 67). We cannot, in any way, regard the superficial treatment of this aspect of the new highway's construction as effective compliance with the reporting requirements of the National Environmental Policy Act, or with the required effective consideration of alternatives.

No specifics are given in the State's plans for the Susquehanna Expressway to control noise through the planning and design of the project itself, or with reference to the establish-

Deficiencies of Environmental Impact Statements, cont.

Noise Pollution, cont.

ment by the State of highway noise standards that would control noise from highway sources. This is a second fundamental deficiency of the State's environmental reporting with regard to the current project.

We are witnessing here the planning of a future highway, with no particular provision or effort to deal in the planning stage with the problem of highway noise. The results of such lack of planning, and the deficiency of the current statements in failing to report upon this environmental impact, and alternatives, is to be seen in the experience of a recently-completed portion of the Interstate System, I-684 in Northern Westchester and Putnam counties. Although I-684 is a six-lane, as distinguished from the instant four-lane proposal, their common use by heavy trucks is a common factor that makes relevant to the planning of the Susquehanna Expressway the unfortunate experience that lack of planning has brought to those subject to the excessive noise factor involving I-684. Attached as Exhibit "III" hereto is a form of petition to the New York State Department of Environmental Conservation, prepared by the Quiet Highways Council, Inc., asking State relief from excessive noise. Although I-684 was constructed before the effective date of the National Environmental Policy Act, no significant difference in terms of construction, as far as the highway noise problem is involved, appears to differentiate the Susquehanna Expressway from its noisy predecessor Interstate, I-684, and the benefits of past experience in terms of this unfortunate problem have not

Deficiencies of Environmental Impact Statements, cont.

Noise Pollution, cont.

in any way affected current highway-building policy, as exemplified by the currently proposed construction. In order to make clear for the record what the State's environmental impact statements are not saying, but ought to say, a quick review of I-684 and its effect on the environment will thoroughly establish the deficiency of the State's environmental reporting, under the national Act, in this respect. The I-684 petition (Exhibit "III"), insofar as here applicable, reports the following realized environmental impact, in terms of noise, of that project:

(p. 3)

"I-684 is a six lane, divided, concrete expressway supposedly built to Interstate standards. Originally designed as an essential link in the highway system between New York and Montreal, it now provides, at best, a circuitous alternative route between New York City and the Thruway Interchange near Newburgh. Extending from the Cross Westchester Expressway on the south, I-684 runs northwards towards Armonk and thence through the rural countryside of northern Westchester County (including the areas of North Castle, Bedford, Mt. Kisco and Katonah) before intersecting with Route I-84 (near Brewster in Putnam County), where it terminates.

(p. 2)

"Since November 1970, when the section of Route I-684 between Armonk and Katonah was opened to traffic, petitioners have been subjected to the constant rush of trucks and cars, to grinding gears, inadequately-muffled engines and

Deficiencies of Environmental Impact Statements, cont.

Noise Pollution, cont.

the roar of cleated treads. The consequences have been a continuous din, day and night, rolling across the Westchester countryside and intruding upon the lives of countless citizens. The rural environment has been transformed, by the incidents of constant noise, into an industrial ear-sore, and the tranquility of the countryside has been overborne. In short, the impact of Route I-684, and the trucks and cars which ply its lanes, has been to totally degrade the surrounding environment. * * *

(p. 3)

"I-684 is a study in bad planning and environmental indignities along its entire 27-mile length. However, its impact is particularly severe in the 10-mile segment between Armonk and Katonah. Cutting across countryside that should, in enlightened retrospect, clearly have been preserved, the road has brought to this area all the accompaniments of high-speed cars and laboring trucks, including, above everything else, the continuous imposition of unwarranted noise.

(p. 4)

"The area deserved and deserves better. Lying only 80 minutes from the City, it has, but for the road, been preserved nonetheless. Its rolling hills and fields bring with them an extraordinary natural beauty that is unique within the metropolitan area; and where the road does not intrude its din, there is a rural tranquillity which offers respite from the City--not only for those who live in the area, but for all citizens of the State who may wander its

back roads... Furthermore, the whole direction of planning has been to preserve this special environment and avoid the disease of urban sprawl that is so rife around New York.

"Now, however, the intrusion of I-684 and the clatter of its traffic have cut through the countryside and transformed it into a corridor of excessive noise. * * *

(p. 5)

"It was hardly unexpected * * * that when I-684 was proposed, it generated fierce opposition from residents of the area. * * * Yet for all this, Federal Highway officials insisted on the present route--and the road was ultimately built.

"The consequences of the decision are no longer speculative. The chickens have come home to roost--and in a fashion that was only too well predicted. Route I-684 is a reality, weaving its ribbons of concrete across the rural countryside; and with it has come the interminable noise of trucks and cars, day and night, rushing obliviously by.

"The impact of the environmental has exceeded all expectations. The noise is not audible, as had originally been predicted, only to nearby homeowners. For many residents two miles or more distant from the Route, traffic seems to pass in their backyards; and for those closer, the noise levels are often so extreme as to rattle foundations.

* * *

(p. 6)

"Conversation is often impossible; sleep is disturbed; and all semblance of tranquillity is lost. Gears shift on back porches, engines roll through bedrooms, tires whine along

Deficiencies of Environmental Impact Statements, cont.

Noise Pollution, cont.

halls." * * *

From the foregoing it is plain that there is more to highway noise than would appear from the State's self-serving environmental impact statements, and that the statements plainly do not comply with the National Environmental Policy Act in terms of reporting the relationship of the proposed construction to noise pollution, or in terms of means to be used in connection with the project to avoid this important adverse environmental effect. We proceed now to an examination of the statements' deficiencies in terms of the reporting of alternatives to the proposed action.

Alternatives to the Proposed Action

Reference to alternatives to the proposed Interstate facility appear at pages "v", "vi", "3", "4", "41", "42", "51", "55", "56", "60", and "68" (Exhibit "64" to Affidavit of Memmott). Apparently no effort is made to justify construction of the new Interstate facility on the basis of actual traffic counts, in view of the low travel demand. This is borne out, inferentially, by the State's assessment of the lack of feasibility of modal alternatives (Exh. "64", p. 51 - Memmott Affidavit), in which it is reported that the present use of mass-transportation facilities in the corridor is in the order of 100 passengers per day. This low travel demand, on a current basis, should be considered in conjunction with a 1970 economic assessment to the New York State Office of Planning Coordination, and reported in a letter of July

Deficiencies of Environmental Impact Statements, cont.

Alternatives to the Proposed Action, cont.

15, 1970 (Exhibit "IV"). In this letter, although justifying the new highway on a number of grounds, the New York State Office of Planning Coordination reported that it was the consultant's conclusion that I-88 would probably have only modest influence on development patterns in the corridor through which it passes. In particular, and insofar as here relevant, the New York State Office of Planning Coordination reported as follows:

"At the present time there are no published economic impact studies available regarding I-88. Economic Consultant's Organization, Inc. of Syracuse is, however, working on a limited assessment of I-88's impact on the Upper Hudson region at this time as part of a larger regional economic base analysis. That firm is currently involved in report revisions in anticipation of final reports being transmitted to our Capital District Office shortly. This limited impact analysis is intended primarily for staff use and accordingly will be made available to the Department of Transportation and their consultants.

"With regard to the Southern Tier East Region, I suggest you take a look at somewhat dated, but still relevant, reports, 'Studies in Regional Development: Population, Activities, and Incomes in Chenango, Delaware, and Otsego Counties' by Barclay G. Jones and Jon T. Lang and 'Studies in Regional Development: A Factor Analysis Approach to Sub-Regional Definition in Chenango, Delaware and Otsego Counties' by Barclay G. Jones and William W. Goldsmith, New York State College of Agriculture at Cornell University.

"Generally, Economic Consultants Organization, as a result of their investigations, have indicated that I-88 will probably have only modest influence on development patterns in the corridor through which it passes. It is the consultant's feeling that other existing development obstacles -- which prevail in much of the corridor area -- will not be offset to any significant degree by the improved accessibility provided by the new highway."

* * *

This economic assessment, reported by the New York State Office of Planning Coordination, now the Office of Planning Services, should be considered in conjunction with the somewhat variant reports by the project sponsor itself, both in the environmental

Alternatives to Proposed Action, cont.

impact statements, and in the project sponsor's justification for building the new highway in the first place.

A further aspect of the failure of the project sponsor to have reported fully on alternatives to the proposed action is the extent to which the purpose of the new road will not be primarily for local development in the corridor, but rather to facilitate highway truck traffic between Binghamton and Albany, and to points beyond, including New England and Pennsylvania. Slight reference is made (Exh. "64", p. 53) to The Delaware and Hudson Railroad Corporation, which currently operates rail freight service between the highway termini. No information is given by the project sponsor as to the current levels of rail freight service in the corridor, or of a projection, based on experience with the effect of other highways on parallel railroads, of the impact that the construction of the new Interstate facility will have on the economic viability of continued rail service in the Susquehanna Corridor. This obviously is of some importance from an environmental point of view, inasmuch as the protection and preservation of existing forms of rail service, including freight, is preferable to a proliferation of highways, both from the viewpoint of combating pollution and the preservation of natural values. This failure, on the part of the project sponsor, to have reported fully on the rail freight alternative to the building of this new highway is most significant in terms of the substantial subsidy to the trucking industry, vis-a-vis the railroads, that is represented by the construction of a new Interstate Highway, including this one. In a paper presented on June 10, 1972, by George W. Brown, Ph.D.,

Deficiencies of Environmental Impact Statements, cont.

Alternatives to Proposed Action, cont.

a transportation consultant, to the Third National Conference on the Transportation Crisis, in Washington, D.C., Dr. Brown reported, on the basis of U.S. Government reports, the dimensions of the generally-unrealized subsidy to the trucking industry, vis-a-vis the railroads. (Exhibit "V") In this report, and insofar as here applicable, Dr. Brown reported (Exhibit "V", cols. 4-5):

"One example of special interest money which is illuminating is the record of trucking subsidy obtained from Federal Bureau of Roads and Commerce Department reports. During the years of 1968 and 1969, 12.3 billion dollars per year were collected in road use taxes and fees. Of this amount 11.7 billion dollars were paid by automobile, bus, and small truck operators. Six hundred and eleven million dollars were contributed by interstate trucking operations. According to a study sponsored by the U.S. Bureau of Public Roads, one 72,000 lb. interstate truck causes as much damage to high grade pavements as 6000 passenger automobiles. Therefore, adjusting for deterioration of pavements per mile traveled, the tax structure should have been inverted, with the heavy interstate trucks contributing 12.1 billion dollars in road use taxes, and the other highway users 211 million dollars. The motoring public was subsidizing heavy truck interstate freight shipments to the tune of 4.6¢ per ton mile. If rail freight shipments had been subsidized at the same rate as truck freight during 1969, we would have paid the railroads a 35.6 billion dollar subsidy!"

* * *

Deficiencies of Environmental Impact Statements, cont.

Alternatives to Proposed Action, cont.

It is in light of these background factors that the discussion by the project sponsor of alternatives (supra) are somewhat unsatisfying. Particularly sparse in its presentation is the discussion of the alternative of the improvement of the existing highway (Exh. 64, pp. 41-42 - Memmott Affidavit), normally a reasonable alternative in light of the reported current average traffic volume of 7,000 vehicles per day (id., p. 3), a relatively light usage.

On information and belief, the New York State Department of Transportation has in fact made such plans for improvement of Route 7, which have not been disclosed to the Court or in their environmental impact reporting because of possible interference of such a reasonable alternative with the current plan to secure 90-10 Federal funding through the building of the proposed Interstate facility.

Such a solution has much to recommend it, and should be considered in conjunction with the State's reported policy (id., p. 68) with regard to its recent highway reconditioning and preservation program, reported in the following terms:

"Air pollution and road congestion caused by growing numbers and greater use of private passenger cars have led the Department to support mass transit on an unprecedented scale. Funds spent or committed for the improvement and extension of rail and bus service have reached \$1 billion in the last three years. The Department has recently established a highway reconditioning and preservation program that involves

Deficiencies of Environmental Impact Statements, cont.

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Alternatives to Proposed Action, cont.

pavement resurfacing, shoulder strengthening, and similar measures that do not entail land acquisitions and that cause the least possible disturbance to communities and the natural environment." * * *

It is just such a reasonable approach, coupled with helping of existing rail freight service in the Susquehanna Corridor, that the Department apparently has jettisoned in the interests of picking up 90-10 Federal funding for unused State mileage in the Interstate System (Exh. "1" to Affidavit of Kirby).

Although it does not appear from the presentation of the project sponsor, or in the environmental impact statements, the true issue is not with regard to the current level of automotive traffic on Route 7, or the current state of repair or disrepair of that artery, since these needs obviously can be taken care of, although without the same range of Federal funding, by more modest and appropriate alternatives.

The true issue, unfortunately masked in the State's presentation, is the future of the Susquehanna Corridor as a major truck route through central New York, largely financed by Federal funds that will, arguably, destroy the economic viability of the rail freight service in that area now handled by the Delaware and Hudson Railroad, and constitutes a crucial step toward a long-range commitment to a particular corridor transportation mode. If this view of the problem is correct, and I strongly urge that further analysis will demonstrate it to be so, much more detailed consideration is required of the State by the National Environ-

Deficiencies of Environmental Impact Statements, cont.

Alternatives to Proposed Action, cont.

onmental Policy Act in terms of impact of the proposed action upon the rail alternative, and a fair and full report, without predisposition as to result, of the alternative of a combination of rail and public transportation in the corridor, with improvement of local facilities as needed.

It is precisely this larger problem, obscured in the minutiae of detail of the numerous environmental impact statements prepared with respect to this project, that was referred to by the United States Environmental Protection Agency in its adverse review of the draft environmental impact statement for the I-10/Papago Freeway in Phoenix, Arizona. Although the problem in Phoenix related to an urban rather than to a mixed rural and urban context, the common factor of long range commitment to a particular transportation mode make those comments particularly applicable to the Binghamton-Albany corridor. In particular, and insofar as here applicable, the comments of the United States Environmental Protection Agency were as follows (Exhibit "VI"):

"We are replying to your letter of June 19, 1972 requesting our review and comment on the draft environmental impact statement for the I-10/Papago Freeway in Phoenix, Arizona.

"This freeway project, particularly the 'inner loop', is one of the initial segments of a comprehensive intra-urban freeway system planned for the Phoenix metropolitan area. As such, it represents a crucial step toward a long-range commitment to a particular community transportation mode. Clearly, this decision, and the commitment it represents, will have a profound impact on future urban form and related environmental values.

"Because it focuses on only one initial segment of the planned freeway system, this draft impact statement cannot reflect the fundamental importance of this transportation decision. In this sense, the I-10/Papago Freeway is not the appropriate subject for an impact statement at this time.

Alternatives to Proposed Action, cont.

If there is to be a true evaluation of the broad, cumulative impacts associated with the planned metropolitan freeway system, the scope of the impact statement must be significantly broadened. The Environmental Protection Agency recommends that such a comprehensive statement be prepared prior to Federal approval of this I-10/Papago segment."

★ ★ ★

In its specific comments, the Environmental Protection Agency continued:

"At this time, Phoenix has no well-developed community transit system; that is, there are no intra-urban freeways and the existing bus system is very limited. While the city has already developed a substantial dependence on automobile, the full range of transportation alternatives is still available. The basic transportation mode which the community chooses will have a profound effect on future urban form as well as general environmental quality.

"Clearly, Phoenix is at a crossroads in the long-range development of its urban form: the city will either continue its lateral sprawl, or it will begin to concentrate itself into higher densities. In a sense, Phoenix is now faced with a decision somewhat analogous to that faced by Los Angeles in the early 1940's. Now, as in the past, the decision will have profound environmental implications.

"The draft impact statement fails to reflect the fundamental significance of this transportation decision. For example, in the summary, the assertion is made that 'this project will have no serious or prolonged effect on land use' and that it will have 'virtually no determining effect on possible lateral expansion of the urban area' (DOT's emphasis). This is quite misleading, and represents the generally myopic viewpoint of the statement. The Papago 'inner loop' cannot be considered as a single, isolated freeway project; it is an initial segment of an extensive freeway system which is now planned for the Phoenix metropolitan area. In that context, it will definitely have a determining effect on land use, lateral expansion, urban form in general, and related environmental values, particularly air quality.

"A broad-scope Federal-State program frequently involves a series of individual, but cumulative, component actions. In such cases, the responsible public agency must determine, for purposes of the environmental impact statement, the appropriate definition of the 'action'; that is, what is the proper scope of the impact statement in connection with such multi-phase programs? If there is an excessively narrow definition of project scope, the resulting impact statement focuses on only one individual component action, thus ignoring the broad, cumulative effects associated with the total program.

Deficiencies of Environmental Impact Statements, cont.

Alternatives to Proposed Action, cont.

"According to Council on Environmental Quality Guidelines, Federal agencies are instructed to construe a Federal action in this way:

"with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated)... In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action....."

"Similarly, Department of Transportation guidelines (Policy and Procedure Memorandum 90-1) state:

"The highway section included in an environmental statement should be as long as practicable to permit consideration of environmental matters on a broad scope. Piecemealing proposed highway improvements in separate environmental statements should be avoided. If possible, the highway section should be of substantial length that would normally be included in a multi-year highway improvement program."

"In this context, the most serious deficiency of this impact statement is its excessively narrow definition of project scope. I-10, as a single component of a comprehensive transportation system, is not the appropriate subject for an impact statement at this time. Instead, the need is for an impact statement which encompasses the entire program for a freeway-based transportation system in Phoenix. Such an impact statement should include a thorough discussion of the other planned freeway segments: Paradise Parkway, New River Freeway, Hohokam Freeway, Square Peak Freeway, Indian Bend Freeway, and the Maricopa Freeway (southwest extension). Only in this way, will there be a true evaluation of all impacts associated with this transportation system; additionally, such a comprehensive analysis might suggest beneficial modifications, or possibly viable alternatives. The Environmental Protection Agency, therefore, recommends that such a comprehensive environmental impact statement be prepared prior to the Department of Transportation's decision to authorize Federal funds for this I-10 segment.

"A second basic deficiency of this draft impact statement, somewhat related to the first, is the inadequate analysis of alternatives. The National Environmental Policy Act requires that a Federal agency, in cooperation with its local client, consider various alternatives to the proposed

Deficiencies of Environmental Impact Statements, cont.

Alternatives to Proposed Action, cont.

project. This mandate has been interpreted to mean that the public agency must actively initiate such analysis; that it cannot sit back, like an umpire, and passively resolve adversary contentions. There is no indication in this draft impact statement that DOT or the Arizona Highway Department actively developed and considered an alternative to this proposed freeway system. To be sure, the section on alternatives does review the literature on mass transit, and does generally discuss the concept of mass transit. In addition, several mass transit plans for Phoenix are described; however, these somewhat superficial proposals were developed independently by interested individuals, and are merely displayed in the impact statement. There is no indication that even these externally-prepared plans were ever part of the in-house decision-making process. Further, the statement acknowledges that the most feasible of the mass transit alternatives is an expanded, extensive rubber-tire bus system; yet there is no analysis at all of such an alternative.

"Finally, the section on alternatives does not address the question of the comparative environmental impacts of freeways and mass transit. This is particularly significant in view of the fact that the proposed freeway network will drastically increase long-range reliance on the automobile, the acknowledged source of Phoenix's severe air quality problem. The statement suggests that cleaner cars and steady-state driving will result in improved air quality; yet there is no discussion of the possibility that the long-term growth of automobile population (stimulated to a large extent by the existence of a freeway network) will negate these short-term benefits, with air quality being worse in 1992 than it is in 1972. Similarly, any mass transit system will have certain environmental implications, and these also must be evaluated."

With regard to specifics as to the deficiencies of the environmental impact statements see other criticisms in Append. B of subject statement (Exh. "64" - Memmott Affidavit). Particular examination of these further deficiencies is not required for the purposes of these motions, except note they raise issues of fact which would have to be the subject of inquiry and proof upon trial of the issues with regard to the instant suit.

The Court should also note that the Department of Environmental Conservation of the State of New York, in its comments on the impact material prepared by the Department of Trans-

Deficiencies of Environmental Impact Statements, cont.

portation (Lett. 8/16/71 to Commr. Parker; Exh. "64", Appendix B, pp. 8-9) recognized the deficiencies of the draft statements in the evaluation of the probable environmental impact, or impacts that the proposed project will cause. To the extent that the comments of the Department of Environmental Conservation are still valid with regard to the final statements, it will be useful to review briefly the negative evaluation of this State department with regard to the Transportation Department's reports of its planning. In particular, the State Department of Environmental Conservation criticized the subject reports as follows (ibid.):

"We must respectfully point out that the subject Draft Statements are deficient in their evaluation of the probable environmental impacts that construction of the proposed project will cause. We have found that many areas of environmental concern are inadequately covered and in some cases not recognized. * * *

"In light of the magnitude of the effects that this proposal could have on the environment, and the strong interest which the public has shown in its review, we feel that a more complete examination of environmental impacts should be made by the sponsoring agency * * * ."

In addition, by way of amplification of the foregoing comments, the New York State Department of Environmental Conservation made the following further specific criticisms, some of which relate to the general criticisms heretofore made (id., p.9):

"AIR RESOURCES

"The Draft Statements repeatedly cite overall reductions in air pollution because of increased traffic speeds and reduced needs for stops and starts. It has been demonstrated by Bellomo and Edgerly (1971) that this is not necessarily the case. Taking into account the threefold increase in traffic that the project is designed to accommodate, overall levels of air pollution from automotive sources would be expected to increase substantially, both along the highway and at its termini.

A 90

Deficiencies of Environmental Impact Statements, cont.

Comments of New York State Department of Environmental Conservation, cont.

"WATER RESOURCES

"Relocation of the Susquehanna River and other streams are not covered in the Drafts, but are shown in the more detailed project reports. The statement that 'all disturbances to streams, rivers, and drainage areas are minimized and of short duration' is inaccurate. Long-term, and in some cases permanent damage will be realized as the result of these actions, and such damages are well documented in many similar cases.

"LAND RESOURCES

"While providing a summarization of acres affected by the project's construction, no evaluation of the relative environmental values that could be assigned those lands is made.

"NOISE

"The premise that noise levels are reduced by modern highway construction is valid only if traffic levels do not increase. By facilitating the stated increase in traffic by the design year, noise levels will be substantially increased throughout the project's length."

* * *

Although these comments were made with reference to the draft statements, a careful review of the verbal changes made in the environmental impact statements between their draft versions and their so-called final form will show that the substance of the criticisms has not been met.

It is quite apparent, from the foregoing, and notwithstanding the elaborate Federal administrative review structure referred to in the affidavits of Mr. Kirby, Mr. Altobelli, and Mr. Borakis, that the New York State Department of Transportation has neither the will nor the requisite expertise to assess the environmental impact of its project under Federal law; it is also plain, in following these procedures, that the Federal defend-

ants have failed to comply with the requirements of the National Environmental Policy Act of 1969, both substantively and with regard to the bringing of the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedures of the Act.

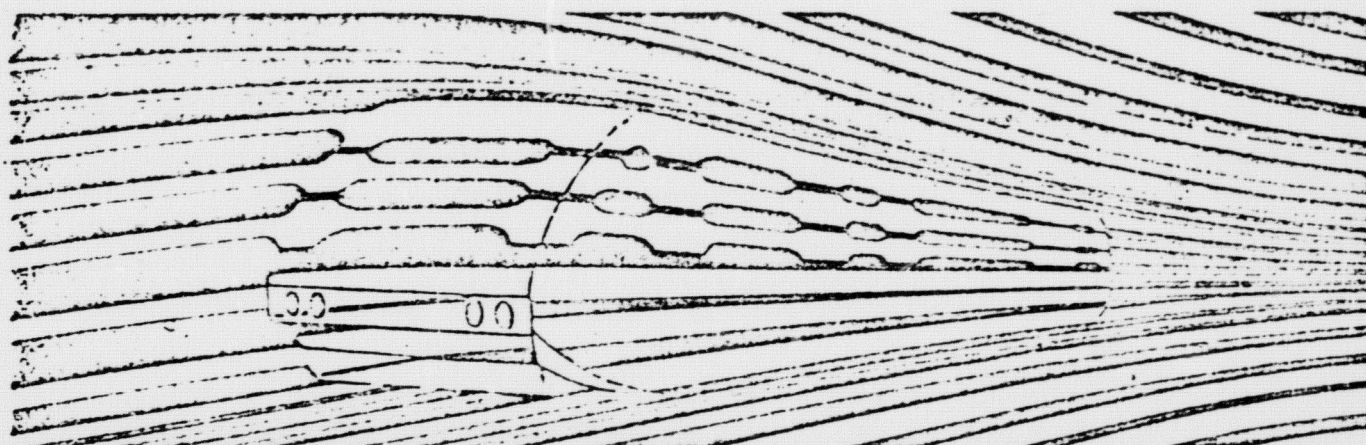
William Hoppen
William Hoppen

Sworn to before me this

24th day of October, 1972.

Harry Shechtman
Notary Public

HARRY SHECHTMAN
Notary Public, State of New York
No. 41,8953-00
Qualified in Queens County
Term Expires March 30, 1974



CAPITAL REGION CITIZENS COMMITTEE - P. O. BOX 222 GUILDERLAND, NEW YORK 12084

April 24, 1972

Secretary John A. Volpe
Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Chairman Russell Train
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20560

Subject: Interstate Route 88 -
Susquehanna Expressway

Dear Secretary Volpe and Chairman Train:

This letter concerns the above project, and details in part the deficiencies of the environmental impact statements prepared by the State of New York as project sponsor. It supplements letters of counsel to Mr. Robert E. Kirby, Division Engineer in Albany, dated March 16, 1972, and to yourselves, dated April 19, 1972, concerning the failure of your Department to have followed the reporting requirements of the National Environmental Policy Act of 1969 (Pub.L. 91-190, 83 Stat. 853, 42 U.S.C., Section 4332). Copies of the foregoing correspondence are attached hereto for reference. Since it is not known what state of review, if any, the State's environmental impact statement or statements (since there are more than one involved) have undergone in your respective agencies, this material is presented to you both on a joint basis with the respectful request that it be considered by each of you, respectively, in the performance of your official functions under the National Environmental Policy Act of 1969. On the basis of our examination, we strongly urge that the various so-called environmental impact statements prepared by the New York State Department of Transportation, the project sponsor, are fatally deficient as a matter of law in that they fail to comply with Section 102(2)(C) of the National Environmental Policy Act of 1969, and they should not be accepted by your agencies as sufficient compli-

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ance with the terms of said Act.

This substantive inadequacy of the proposed environmental reports is separate and distinct from the procedural infirmity under the Act referred to in our accompanying correspondence, that the State environmental impact material was not prepared by the responsible Federal official, and constitutes improper and illegal delegation of authority and Federal responsibility under the National Environmental Policy Act of 1969.

Q Although the specific deficiencies reviewed herein relate to that segment of the proposed highway from the Schoharie-Schenectady County Line to Interstate Route 890 in Albany and Schenectady Counties, the final statement with regard thereto having been submitted by the State of New York on March 27, 1972, the applicability of our conclusions also relate to the environmental planning of a number of other segments of this project, with regard to several of which the State has also prepared environmental impact statements and, in certain instances, has anticipated Federal approval by beginning construction before completion of the environmental review process. These segments are:

I-81, I-88 Interchange
Nimmonsburg to Chenango Bridge

Chenango Bridge to Sanitaria Springs

Sanitaria Springs to Harpursville

Harpersville to Oneonta (West City Line)

Oneonta Section (West City Line to East City Line I)

Oneonta to Schoharie-Schenectady County Line

This is a pertinent and instructive example of the weaknesses of the current procedure of environmental reporting and preparation of impact statements under Section 102(2)(C) of the Act. To the extent that we have reviewed New York State's environmental impact material submitted in connection with the other segments, it shares in its common superficial approach to the environmental problems involved and in what appears to be a common problem under the Act, the often amusing but nonetheless serious expedient of attempting to justify verbally, to achieve a priori project goals, the compliance of anti-environmental projects and procedures with environmental standards. At the same time, by misrepresenting the environmental impact of the project in varying terms to the numerous communities involved in the various segments, the pro-

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ject sponsor is relieved of the necessity of overall environmental justification of the project which would make clear the overall impact of its project, the availability of alternatives, and those considerations of overall planning that would make patent to all the a priori basis of the exercise.

We believe that this is not what was intended by the National Environmental Policy Act of 1969, of what is required by the plain meaning of its terms. As a specific illustration of the disparity between the plain requirements of the National Environmental Policy Act and the woefully inadequate compliance by New York State in the preparation of its environmental impact statement or statements with regard to this project, a pertinent example of a degree of administrative schizophrenia at the State level is found in New York's counter-productive efforts in carrying out its highway building program in the face of its efforts, at the same time, to meet national clean air standards in the form of its Implementation Plan to Achieve Air Quality Standards in upstate New York. As a preliminary to our analysis, your attention is respectfully directed to pages 32-24 and 68 of the subject impact statement. This cursory discussion, inadequate as it is, is nonetheless more complete by far than the related paragraphs of discussion of the air pollution problems attendant upon the construction of new highways contained in the various other environmental impact statements prepared by the State of New York in connection with the proposed project. In its role as a builder of highway, New York State concludes (p. 33) that "a generally beneficial effect on air pollution levels can be derived from improved traffic operation", that "the summer and fall prevailing winds would be perpendicular to the expressway thus aiding the dispersal of the polluting emissions during the seasons when production and concentration conditions are likely to be the greatest", that although "with higher average operating speeds the emission rate of nitrogen oxides is likely to rise" that with use of emission control devices, which we will discuss later, the level of nitrogen oxides would be maintained at "no higher than the present rate" (p. 33). In conclusion (p. 34) New York State urged that air pollution effects will be at least partially controlled through such design treatments as "depressing the roadway slightly" and by "applying various landscaping techniques" to absorb or baffle sound "and disperse the pollutants." After this rather disheartening review of its air pollution problems in connection with this highway, New York State concluded its air pollution assessment with what can only be regarded as a form of withdrawal from the problem (p. 34): "Although the automobile contributes heavily to general air pollution, it should be remembered that this is primarily a regional problem, rather than one associated solely with a new expressway. The problem must, in the long run, be solved primarily through technological improvement of the internal combustion engine or through substitution of other power sources" and, in a state of total withdrawal (again at page 34), "Therefore, air pollution impact would be minimal."

New York State's subject environmental impact statement was approved for E. Wilson Campbell, Director, Planning Division of the New

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York State Department of Transportation on March 27, 1972. There is no reference in it, whatsoever, to New York State's current efforts to meet national air quality standards under the Clean Air Amendments of 1970 and the New York State Air Quality Implementation Plan of January 1972. It is inconceivable that the results of this Plan were not available to the Department of Transportation for use in preparation of its environmental impact statement with regard to the subject project, or that it should have been completely ignored by the State of New York in its preparation of the subject statement under the National Environmental Policy Act. Yet that, unfortunately, appears to be precisely the case, and is the basis for our diagnosis of administrative schizophrenia, at the State level, on this subject.

Therefore, since no reference to New York State's plans for improvement of air quality is included in its report on the environmental impact of the building of the proposed Susquehanna Expressway, we will herewith include, in order to complete New York State's environmental impact statement, the relevant material from the Upstate New York Air Quality Implementation Plan - January 1972 and its report on Motor Vehicle Emissions Control - A Plan for Action (November 30, 1971). At the conclusion of our review of this material, it is respectfully submitted, the reason for omission from New York State's environmental impact report on I-88 will become plain: The reconciliation of mutually inconsistent goals, that is, the building of ever more and bigger highways, on the one hand, and the achievement of national air quality standards, on the other hand, is conducive neither to administrative sanity nor to the full and frank disclosure, by the involved agencies, of what is actually taking place when administrative decisions are made as to whether to build, or not to build, a highway.

To start at the beginning, as you are aware, the Clean Air Amendments of 1970 require each State to attain national primary ambient air quality standards by 1975 in order to protect the public health. In order to reach these standards, each State must promulgate a State implementation plan by February of 1972. The Administrator of the Federal Environmental Protection Agency is required to reject any State plan which will not assure attainment of these standards in the allotted time. It is arguable, at least in certain areas, whether the building of additional highways is compatible with any plan to reduce pollution. This is particularly true in the Northeast and in the Atlantic region where broad effects of air pollution, attendant upon regional climatic inversions, have already given the nation a foretaste of the consequences of the unrestrained use of the automobile upon the continued healthy breathability of our air. This is certainly true to the extent that alternate means of transportation, including rail and less-polluting forms of public transportation are available to our current highway planners. It is the failure, effectively, to come to grips with this phase of the problem that is one of the largest, if not the major substantive defect of the State's environmental impact report on this project.

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Part of the record before the New York State Department of Transportation in this case, although not specifically considered in the State's impact material, is the statement of Jon W. Jacklet of the State University of New York. Professor Jacklet, whose specialty is biology, outlined some of the environmental effects of indiscriminate highway construction, particularly with regard to air pollution. Some of the recent findings in this area, as reported by Professor Jacklet, is that it is estimated that \$130 million a year in plant damage is caused by air pollution in the United States. Sixty (60%) per cent of all air pollution is estimated to come from motor vehicles. Over 90,000,000 tons of exhaust fumes and particles are emitted from these vehicles. Eighty per cent (80%) of the exhaust fumes consist of carbon monoxide. Nitrogen and sulphur oxides occur in lower amounts but also cause damage to plants at low levels of concentration. One of the most potentially serious pollutants from motor vehicles is lead. 500,000,000 pounds a year of exhaust lead is released by motor vehicles in the form of particles. These particles are deposited close to the road and reach concentrations of more than several hundred-fold their degree of natural concentration. These lead deposits find their way into plants and can disrupt the enzyme systems of the plants at quite low concentrations (*Science* 167: 1376, 1970). The minimum possible result is weakening of plants and making them more susceptible to disease; the maximum possible result is death of the plant. The effect of poisoning the plants, of course, is passed along to the animals that feed upon. It is in the light of this background of the pervasive effect of continued automotive pollution upon the viability of natural systems that New York State's conclusion that air pollution impact would be "minimal" (p.34) is open to grave question, and requires extensive further study.

With reference to nitrogen and sulphur oxides, noted above as automotive-related contaminants, current research raises pertinent questions, not considered in New York State's environmental impact material, as to the relation of such pollution to acid levels in precipitation (rain and snow) which now ten to one hundred times higher than normal in New England (*Environment*, vol. 14, No. 2, March 1972, p. 33, et seq.) The article, by Cornell, Yale, and Dartmouth university scientists document rising acidity in four northeastern states: New York, New Hampshire, Massachusetts; and Connecticut. A news release from Cornell University during preparation of the article reports that acid rain is also falling in Maine, Vermont, and Rhode Island. Although the implications for human health are not clear-cut, the magnitude of the situation already approaches that in the Scandinavian countries, where rain and snow with high acid levels associated with air pollution have been blamed for reduced forest growth, interference with aquatic life, and expensive corrosion damage to buildings. Acid trends in precipitation serve as a serious warning, according to this source, that a massive change in environmental conditions is occurring which must be assessed in broadest terms of human and ecological well-being. An

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Carbon Monoxide, cont.

ity Control Region to be affected by construction of the new highway, trucks and the private automobile in 1970 contributed 7,605 of the 12,878 tons of carbon monoxide emitted. Notwithstanding the presence of a substantial portion of the grand total from off-highway sources, even in Schoharie County, currently, it is clear that the major source of carbon monoxide pollution is related to trucks and the private automobile, and to highways.

Exhibit "D", likewise consisting of three pages (B-127, B-128, B-129), is Table 8-9 from the aforesaid New York State Air Quality Implementation Plan projecting expected carbon monoxide levels in the year 1975 in the same Region. A comparison of the related figures show proposed reduction of the total amounts of carbon monoxide to be emitted, and a reduction to be emitted by Gasoline Vehicles, although in each case, in 1975, trucks and the private automobile will remain as the major source of this type of pollution in these areas, and certainly overwhelmingly so in Albany and Schenectady counties.

From the State's air quality report does not appear the extent to which increased traffic by gasoline vehicles have been included on account of the proposed construction of the Susquehanna Expressway (I-88) in these areas. Conversely, failure of the State to have considered the impact of the construction of the highway on its plans for implementation of Federal standards of air quality lead to the obvious conclusion that the highway planners were unable to relate these two, and apparently inconsistent State goals in a meaningful way, and thus chose to ignore the conflict.

Certainly to the extent that air quality planners have relied in their projections from Federal restrictions on exhaust emissions from new vehicles, it is increasingly doubtful whether 1975 goals will be met in that respect and whether, on a meaningful basis, planners can safely project in this field other than in terms of restricting future use of trucks and the private automobile, including a general moratorium on new highway building, and in terms of increasing reliance on subsidized public transportation, including better rail and bus service, with strict pollution controls. This will be taken up more fully later, but is adverted to at this point as a note of caution in considering the State's figures and projections in its air quality report, and of optimistic predictions with regard to immediate improvement, in terms of pollution, of the internal combustion engine.

Exhibit "E", consisting of two pages (B-88, B-89), is Table 8-6 from New York State's Air Quality Implementation Plan as it relates to carbon monoxide levels in 1970 in the Southern Tier East Air Quality Control Region, the second region which will be affected by construction of the proposed Expressway. In this case, the four counties of partic-

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Carbon Monoxide, cont.

ular impact are Broome, Chenango, Delaware, and Otsego. According to the State air quality report, in 1970 the following figures showed the overwhelming importance of highway-related pollution in the existing carbon monoxide levels in the particular counties:

In Broome County, of a grand total of 106,297 tons of carbon monoxide currently emitted on an annual basis, a total of 97,642 tons, or approximately 92%, was ascribed to Gasoline Vehicles.

In Chenango County, of a grand total of 24,359 tons of carbon monoxide emitted during the year, 15,857 tons was ascribed by the State to highway use, that is, to Gasoline Vehicles.

Likewise, in Delaware and Otsego counties, the other two counties to be affected by the proposed highway construction, the overall totals of 25,485 and 27,138 tons of carbon monoxide, respectively, emitted during the year consisted of highway-related carbon monoxide in the respective amounts of 13,730 and 17,059 tons, in each case being the major source of this particular pollutant.

Exhibit "F", likewise consisting of two pages (B-130, B-131) projects expected carbon monoxide levels in these same counties in 1975. Subject to the cautionary remarks above, in connection with the consideration of figures from the Hudson Valley Region, it should be noted that notwithstanding a projected decrease in total and highway-related pollution from this source by three years from now, in 1975, that the highway will continue as the major source of pollution of this type in each of these counties at that time, and certainly overwhelmingly so in Broome County.

Hydrocarbons

Exhibit "G", consisting of three pages (B-99, B-100, B-101), is Table 8-7 from New York State's air quality implementation plan for Upstate New York, and relates to existing levels of pollution in terms of hydrocarbons in the Hudson Valley Air Quality Control Region. According to the State air quality report in 1970 the following figures relate the relative contribution of automotive traffic and the highway to total existing hydrocarbon levels in the particular counties in the following terms:

In Albany County, in 1970, of a grand total of 32,596 tons of hydrocarbons emitted from all sources in the county during the year, a total of 26,545 tons, or approximately 81%, were

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Hydrocarbons, cont.

analyzed as related to highway use.

In Schenectady County, the proposed terminus of the new highway, of a total of 15,584 tons of hydrocarbons emitted from all sources in 1970, a total of 11,301 tons was ascribed to the use of gasoline vehicles.

In Schoharie County, through which the new Expressway would pass, of a total of 2,277 tons of hydrocarbons emitted from all sources in 1970, the State air quality report assigns 1,192 tons, or the major part of this pollutant, to highway use.

Exhibit "H", likewise consisting of three pages (B-141, B-142, B-143; Table 8-10) projects expected hydrocarbon levels in these same counties in 1975. Subject to the cautionary remarks above, with regard to the planning pitfalls in taking as given quantities for purposes of projections proposed reduction in auto emission levels based on current Federal guidelines, and without a positive limitation on automotive traffic, it should be noted that notwithstanding projected decreases in total and highway-generated pollution in terms of hydrocarbons by 1975, that the highway will continue as the major source of pollution of this type in Albany and Schenectady counties at that time, and will be a substantial factor in Schoharie County.

Exhibit "I", consisting of two pages (B-102, B-103; Table 8-7) from New York State's air quality implementation plan for Upstate New York, concerns hydrocarbon pollutant levels in 1970 in the Southern Tier East Air Quality Control Region, which includes Binghamton and the intervening counties through which the new Expressway would run. According to this State air quality report, in that year, the following figures showed the major or substantial importance of highway-related pollution in terms of hydrocarbons in these areas:

In Broome County, where the western terminus of Binghamton is located, of a grand total of 20,225 tons of hydrocarbons reported to have been emitted during the year, almost three-quarters of this amount, or 15,290 tons were related to gasoline vehicles and highway use.

In Chenango County, of the grand total of 4,359 tons of hydrocarbons, the major part, or 2,434 tons, were highway-related; in Delaware County the total number of tons of hydrocarbons deposited annually was 4,589, of these 2,152 tons of hydrocarbons came from gasoline vehicles; in Otsego County of the total tonnage of 4,897 of hydrocarbons, 2,673 were highway-related.

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Hydrocarbons, cont.

Exhibit "J", likewise consisting of two pages (B-144, B-145; Table 8-10) projects expected hydrocarbon pollutant levels in those same four counties in 1975. It should be noted in each case, and notwithstanding predicted decreases in hydrocarbon pollution in the Southern Tier East Air Quality Control Region, hydrocarbons from gasoline vehicles, related to continued highway use, will remain as the major or a substantial factor in the total amount of hydrocarbon pollution remaining in the region.

Nitrogen Dioxide

Exhibit "K", consisting of three pages (B-113, B-114, B-115; Table 8-8) sets forth existing levels of pollution in terms of nitrogen dioxide in the Hudson Valley Region. These are:

In Albany County, taken as of 1970, of a grand total of 33,532 tons of nitrogen dioxide emitted during the year, 18,516 tons were related to highway use, that is, gasoline vehicles; in Schenectady County, of the total pollution of 13,214 tons of nitrogen dioxide, 7,876 tons came from gasoline vehicles; in Schoharie County, the third county in this region to be affected by the proposed new highway construction, of a total of 1,469 tons of nitrogen dioxide, 946 tons of this form of pollutant in 1970 came from existing trucks, automobiles and highways.

Exhibit "L", likewise consisting of three pages (B-155, 156, B-157; Table 8-11) predicts the levels of nitrogen dioxide pollution in each of these counties in the Hudson Valley Region. Without necessarily accepting the bases upon which these predictions are made, the State's air pollution figures nonetheless show that, notwithstanding hoped-for reductions, highway-originated pollution in the form of nitrogen dioxide will still, in 1975, constitute the major part of the pollution tonnage of that form of air pollution in each of those counties, as follows:

<u>County</u>	<u>Tons of Nitrogen Dioxide</u>	
	<u>1975</u>	<u>From Gasoline Vehicles</u>
Albany	28,580 Tons	14,540 Tons
Schenectady	11,794 Tons	6,220 Tons
Schoharie	1,338 Tons	776 Tons

Exhibits "M" and "N" give the parallel figures for nitrogen oxides in 1970 and 1975 in the four affected counties in the Southern Tier East Air Quality Control Region. As noted in connection with the foregoing figures, although there is a projected reduction in this form

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Nitrogen Dioxide, cont.

air pollution by 1975, both the 1970 and 1975 predicted figures show that nitrogen dioxide from highway sources, that is, from gasoline vehicles, now is and will continue to be a substantial or the major factor in the total amounts of this form of air pollution.

A further source of information apparently ignored by New York State in its preparation of environmental impact material in justification of the construction of the new highway is the further report by the New York State Department of Environmental Conservation, dated November 30, 1971, entitled Motor Vehicle Emissions Control - A Plan for Action. By way of introduction to the study, the report noted that primary air quality standards for carbon monoxide, photochemical oxidants, hydrocarbons and nitrogen oxides are being exceeded frequently in large metropolitan areas of the State, exposing 55 per cent of our population to substandard air quality. Mobile sources emit about 95% of the carbon monoxide throughout New York State, and from 65-85% of the hydrocarbons and 30-40% of the oxides of nitrogen in urban areas. To alter these conditions and move toward good air quality for all of New York's citizens, the report continued, the number of sources must be curtailed and the emissions from individual sources must be reduced. To achieve this goal, the following program was recommended to State agencies, including inferentially the Department of Transportation itself: Reduce the number of vehicles operating in cities, promote mass transit alternatives to individual automobile use, upgrade the automotive service industry, reduce the emission rates of high-emitters, and enforce emission standards, institute a campaign for public support and cooperation, set up mobile source laboratories, and convert urban fleets to gaseous fuels. From the standpoint of the instant problem, that is, whether or not to build a new highway between Binghamton and Albany, the most significant part of the State's report stems from its recognition of the alternative of mass transit to a continued emphasis, still followed by the Department of Transportation, upon increased individual automobile use.

While recognizing the continued role of the private automobile in suburban and rural areas, as well as for travel between smaller cities, the report recommended that the best ultimate solution lies in the development of good mass transit systems in and between the major cities of the State, with ample satellite parking facilities to accommodate private automobiles. Material from this report, apparently not available to the New York State Department of Transportation in connection with the preparation of its environmental impact material, is likewise attached, as follows:

Exhibit "O" - New York State Air Classifications
(Fig. 4)

Exhibit "I" -
Air Pollution

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Motor Vehicle Emissions Control, cont.

Exhibit "P" - Extent of Exposure of New York State Population to Carbon Monoxide Emitted By Motor Vehicles (Page 2-21)

Exhibit "Q" - Extent of Exposure of New York State Population to Particulates Emitted By Motor Vehicles (Page 2-25)

Exhibit "R" - Extent of Exposure of New York State Population to Oxides of Nitrogen Emitted by Motor Vehicles (Page 2-29)

Exhibit "S" - Extent of Exposure of New York State Population to Hydrocarbons Emitted By Motor Vehicles (Page 2-33)

A copy of this report will be furnished to the New York State Department of Transportation upon request.

Of particular importance in relating the foregoing figures, and the existing levels of air pollution, to projected degrees of compliance by New York State with national clean air standards is the projected degree of use by automobiles and other gasoline engine-powered traffic in future years in the Susquehanna Corridor between Binghamton and Albany. At page 3 of the particular environmental impact statement being examined, the State of New York reports a projected almost-three-fold increase in highway traffic in the corridor by the 1990's, as follows:

"The expected economic growth in the metropolitan areas will have a great effect upon highway traffic volumes in the Route 7 corridor. It is anticipated that traffic generated by this growth, currently increasing commuter and recreational travel within the corridor, and the trend toward greater automobile usage will produce an average daily traffic volume of 20,000 vehicles in the 1990's, as compared with the present volume of 7,000 vehicles."

The extent to which this projection relates to the recommendations of New York State, referred to above, that the number of automobiles operating in cities should be reduced, that mass transit alternatives should be promoted as against individual automobile use, and its recommendation that the best ultimate solution to the transportation and air pollution problems involved lies in the development of good mass transit systems in and between the major cities of the State (Motor Vehicle Emissions Control - A Plan for Action, New York State Department of Environmental

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Conservation, pp. 1-1, 1-2, 1-4), remains open to question.

Likewise open to question is the extent to which the current traffic loads in the corridor, and projected increased automotive use contingent upon completion of the facility, relate to the projected figures with regard to projected automotive-related pollutants in 1975, and in the future. It is entirely possible, since the air quality reports were not referred to in any way in the State's environmental impact material, that this factor has not been considered in any way in the State's planning for this new highway.

It is also not clear with regard to the extent that the construction of the proposed Susquehanna Expressway is reflected, in terms of additional automotive-related pollutants, in the State's material with respect to its implementation plan to meet national clean air standards by 1975. Since the State's plans with reference to the new highway involve nearly a 300% increase in automotive traffic in the corridor by the 1990's, it may have been concluded that this major increase would take place after 1975, and therefore need not be considered. While this may be administratively satisfying in terms of meeting the Federal administrative deadline on clean air by 1975, it does not in any way satisfy the requirements of the National Environmental Policy Act, in our judgment, in terms of reporting the full environmental impact of the proposed construction on New York State's air quality, regardless of whether its impact will come before or after 1975, and in terms of consideration of alternatives to the proposed action, including provisions for effective rail service in the corridor and related elements of public transportation.

From the foregoing it is quite clear, apart from a reading of the superficial and rather sketchy conclusion (p. 34), that "air pollution impact" will be "minimal", that the State of New York has not adequately investigated and reported with regard to the environmental impact of air pollution resulting from construction of this new highway. This type of superficial and self-serving reporting on the part of State agencies bent on justifying particular projects, regardless of their wisdom and environmental compatibility, underlines the importance of the objections heretofore made by our attorney to yourselves and Mr. Kirby with regard to the impropriety, under the National Environmental Policy Act of 1969, of entrusting the preparation of the necessary statements under Section 102 of the Act to the interested and often, as here, unqualified efforts of the affected State agencies. It is only fair to anticipate, if such an illegal procedure is continued to be followed, that the State agencies, as here, will either misrepresent (or perhaps entirely ignore) relevant environmental data in the interests, short-sighted at best, of securing Federal approval and funding of their particular projects. This, in our opinion, is not the purpose of the National Environmental Policy Act, nor is it permissible within the plain meaning of its terms, which gives that charge to the responsible Federal official concerned, in this

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case the Secretary of Transportation.

We have mentioned before (at page 6, above) the degree of caution to be exercised by planners in relying, in their projections, upon projected Federal restrictions on exhaust emissions from new vehicles. While we have referred to and attached to this letter certain materials from the New York State air quality implementation plan in this regard (Exhibits "C" - "N", following), to the extent that even these figures, to the extent that projections are involved, may be subject to this infirmity, the following commentary on the administrative difficulties in this field are pertinent and may well coincide with the realistic assessment of the problem by your own agencies (V. Brodine, "Running in Place", Environment, vol. 14, no. 1, Jan.-Feb. 1972, pp. 6-7):

"To the unwary layman, it might appear that the requirement of a 90 percent reduction by 1975 of hydrocarbon, nitrogen oxide, and carbon monoxide emissions in new automobiles would eliminate 90 percent of the present air pollution attributed to the automobile. Not so. There will still be many pre-1975 cars on the road, the number of cars and miles traveled per vehicle and the concentration of cars in cities and their environs are expected to continue rising; and the efficiency of the control devices is expected to deteriorate with age. Urban emissions of hydrocarbons and carbon monoxide are now dropping, and nitrogen oxides are expected to begin a downward trend before 1975, but when they reach their lowest point, about 1990, the reductions, according to EPA projections, will be about 93.5 percent for hydrocarbons from their high in 1967, about 85 percent for carbon monoxide, and 80 percent for nitrogen oxides. After that, if automobile use continues to increase, air pollution from this source will begin to rise again. Furthermore, these projections are very optimistic. They assume that between now and 1975 the new models will meet present standards; although tests so far have shown that most cars are not doing so;¹¹ it is assumed that the 1975 models will be able to meet the more restrictive standards set for that year, although spokesmen for the automobile industry are still saying that this is impossible.

"What will happen to the complex chemistry of the air as the ratios of one pollutant to another are changed is unclear. The reduction in hydrocarbons and carbon monoxide from the early automotive control devices were achieved at the expense of a rise in nitrogen oxides. Also, the changing ratio of nitrogen oxides and hydrocarbons may have been responsible for another effect noted in Los Angeles between 1962 and 1967: Although the daily photochemical oxidant peaks were lower, the overall exposure was greater.¹²"

The beginning of this environmental demarche, with its consequent effect on current future projections of air quality standards, can be seen in the recently published report of the study committee headed by Dr. Gold-

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muntz for the Office of Science and Technology. This report, according to published reports, urged that serious consideration be given to easing laws on air pollution by automobiles, and argued that national air quality standards could not be attained in many urban areas in the specified 1975-77 time period even if exhaust emission controls were enforced as now written. Among specific actions the committee suggested were: Relaxing the Clean Air Act provision limiting to 0.4 grams per mile the emission of nitrogen oxide to be allowed from cars starting with the 1976 models, raising the limit to between 1 and 2 grams, to cut costs; and institution of a two-standard requirement for different areas, coupled with the overall relaxation. The report was praised by the president of the Ford Motor Company.

The plain impact of these developments is not, necessarily, that we will have dirtier air by 1975 and 1990, but that a broad re-examination is now taking place, today at the citizen level, tomorrow at government and industry levels, of the place of the private automobile and continued highway building as usual in American society. It is precisely these larger questions of determining whether or not to build a particular highway, to implement a comprehensive statewide transportation master plan primarily based on an intercity expressway network of highways, or to reconcile State goals of achieving satisfactory standards of air quality with its transportation goals that the reporting requirements of Section 102 of the National Environmental Policy Act is designed to further.

It was for these reasons that counsel, in his letter of March 16, 1972, to Mr. Robert E. Kirby, Division Engineer, questioned the adequacy of the New York State Department of Transportation study, in any, to the problem of air pollution, in the following two particular respects:

(A) The relation of New York State's highway planning to its proposed implementation of the Clean Air Amendments of 1970, particularly with reference to existing air pollution levels in the Capital Region and projected increases with planned increased traffic from such highway projects, particularly with regard to the inversion problem; and,

(B) Likewise, the relation of New York State's highway program to its proposed implementation of the Clean Air Amendments of 1970 with regard to the Susquehanna Corridor itself in terms of the increase of automotive-related contaminants in the corridor by reason of the proposed construction, as contrasted with other less-polluting alternatives.

We renew, at this time, the suggestion of counsel to Mr. Kirby, as what we contend to be the Federal Department of Transportation's responsibility under the National Environmental Policy Act of 1969, that the Federal Department of Transportation itself conduct an impartial and

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and independent survey and investigation with regard to this and other aspects of the environmental impact of the project which are part of the Federal 102 review requirements under the 1969 Act. This, as counsel has reviewed, is one of the particular impact areas of the Greene County decision which the Department of Transportation should consider in the implementation of its responsibilities under the 1969 Environmental Policy Act.

In particular we urge, as before, that if the Federal Department of Transportation, by reason either of its involvement in the advocacy of this project or by reason of lack of personnel, is not in a position to make such an independent and impartial evaluation, we strongly urge, as a necessary step in the final preparation and submission of the Federal impact statement, that the United States Department of Transportation itself retain independent outside experts of recognized authority and expertise in the air pollution field to make such study and report in implementation of the Secretary of Transportation's duty, as the "responsible Federal official", to investigate and report under the 1969 Act.

This study should also include the relation of this proposed construction to rail and public transportation alternatives in the Susquehanna Corridor. We strongly urge that what New York State has done in no way satisfies the requirements of study and full evaluation of alternatives under the National Environmental Policy Act of 1969, and that it is urgent that the Federal Department of Transportation undertake this study immediately and under broader sponsorship than that of the Federal Highway Administration itself, of the rail and public transportation alternatives in the Susquehanna Corridor, in addition to the air pollution survey, and all on a regional basis.

In connection with the eventual environmental impact statement that is prepared in connection with the Susquehanna Expressway (I-88), we respectfully call your attention to a recent letter from Mr. George Marienthal, Acting Director of the Office of Federal Activities of the Environmental Protection Administration. This letter, received August 20, 1971, was directed to Mr. L. E. Jordan, District Engineer, in Allentown, Pennsylvania, and dealt with reporting requirements on air pollution in connection with the proposed construction of I-78 in Northampton County. In his letter, submitted for Mr. Jordan's consideration and guidance in the preparation of the final environmental statement and in the conduct of the project, Mr. Marienthal made the following recommendations in connection with his comments:

"The draft statement contends that 'I-78 will have a negative effect on air pollution in the area.' This contention is supported by the statement that 40,000 vehicles per day (VPD) will be diverted off Route 22 to I-78 by 1990. In addition, 'tighter Federal standards by 1974 on automobile manufacturers will further improve air

National Environmental Policy Act

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Environmental Protection Administration, cont.

quality.'

"It appears to us that the 40,000 VPD diversion from Route 22 will constitute only a portion of the traffic flow on I-78 by 1990. To permit a determination of the effect on air quality the following factors should be considered in the final environmental impact statement: total vehicular flow per day, mix of vehicles (trucks, buses, passenger automobiles, etc.) meteorological data, design features which may require acceleration or deceleration (for through as well as for exit and entrance traffic) and predicted land uses for lands adjoining the roadway.

"As indicated in the draft statement, the highway will stimulate commercial, industrial, and housing development. These are considered secondary impacts of the highway project and should be considered when assessing impacts on air and water quality.

"In view of the possible vehicular flows above those estimated in the statement and the apparent failure to fully consider secondary impacts, we cannot agree with the conclusion contained in the statement that 'I-78 will have a negative effect on air pollution in the area.'

"This highway project is located in the Northeastern-Upper Delaware Valley Interstate Air Quality Control Region. Since this project may influence the Regional Implementation Plan to achieve National Air Quality Standards, this possible effect should be fully discussed in the final statement."

Of particular relevance to the reporting requirements of the Environmental Policy Act, particularly with regard to secondary impacts of the highway project referred to above, are those areas of the subject impact statement prepared by the State of New York which refer to the objectives of promoting economic growth and development in the corridor, promotion of the economic development of the Appalachian region and of specific growth areas in the Susquehanna Valley and the Cobleskill-Schoharie Appalachian sectors (p. 4, 37-38, 54, 55-58). Failure of the New York State to have considered the secondary impacts of this development, in terms of air quality, is a further defect of its environmental reporting which must be remedied.

In conclusion, as heretofore urged by counsel, we strongly urge that you do not approve any of the so-called final environmental impact statements submitted by the New York State Department of Transportation with respect to the subject project until the Federal Department of Transportation itself, as required by law, has undertaken the necessary steps to prepare the final impact statement for the project required of the Secretary of Transportation. Preparation of environmental impact

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material by the project sponsor, in this case the New York State Department of Transportation, does not meet the requirement of the National Environmental Policy Act that same be prepared by the responsible Federal official, and constitutes improper and illegal delegation of authority and Federal responsibility under the National Environmental Policy Act of 1969. Scheduling and holding of corridor and design hearings in advance of preparation and circulation of final environmental impact statement on comprehensive corridor basis by Federal Secretary of Transportation is illegal and in violation of law.

We have limited ourselves, in this letter, to an analysis of the deficiencies of New York State's environmental presentation under the 1969 Environmental Policy Act with regards to air pollution; it is expected that a more complete review of other details with regard to which we believe New York has been remiss in its presentation of required material under the National Environmental Policy Act will follow in due course.

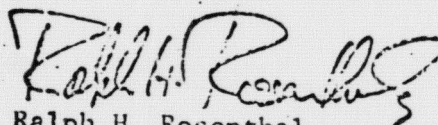
It is respectfully requested, as before, that the opportunity be given to confer with responsible Federal official before further steps are taken to implement illegal procedure, and with responsible official or officials of Council on Environmental Quality with respect to implementation of National Environmental Policy Act of 1969.

Enclosures:

Letter 4/29/72.

Letter to R. Kirby 3/16/72

Very truly yours,

Ralph H. Rosenthal
Chairman, CRCC

Copy to: President Richard M. Nixon
The White House
Washington, D.C. 20500

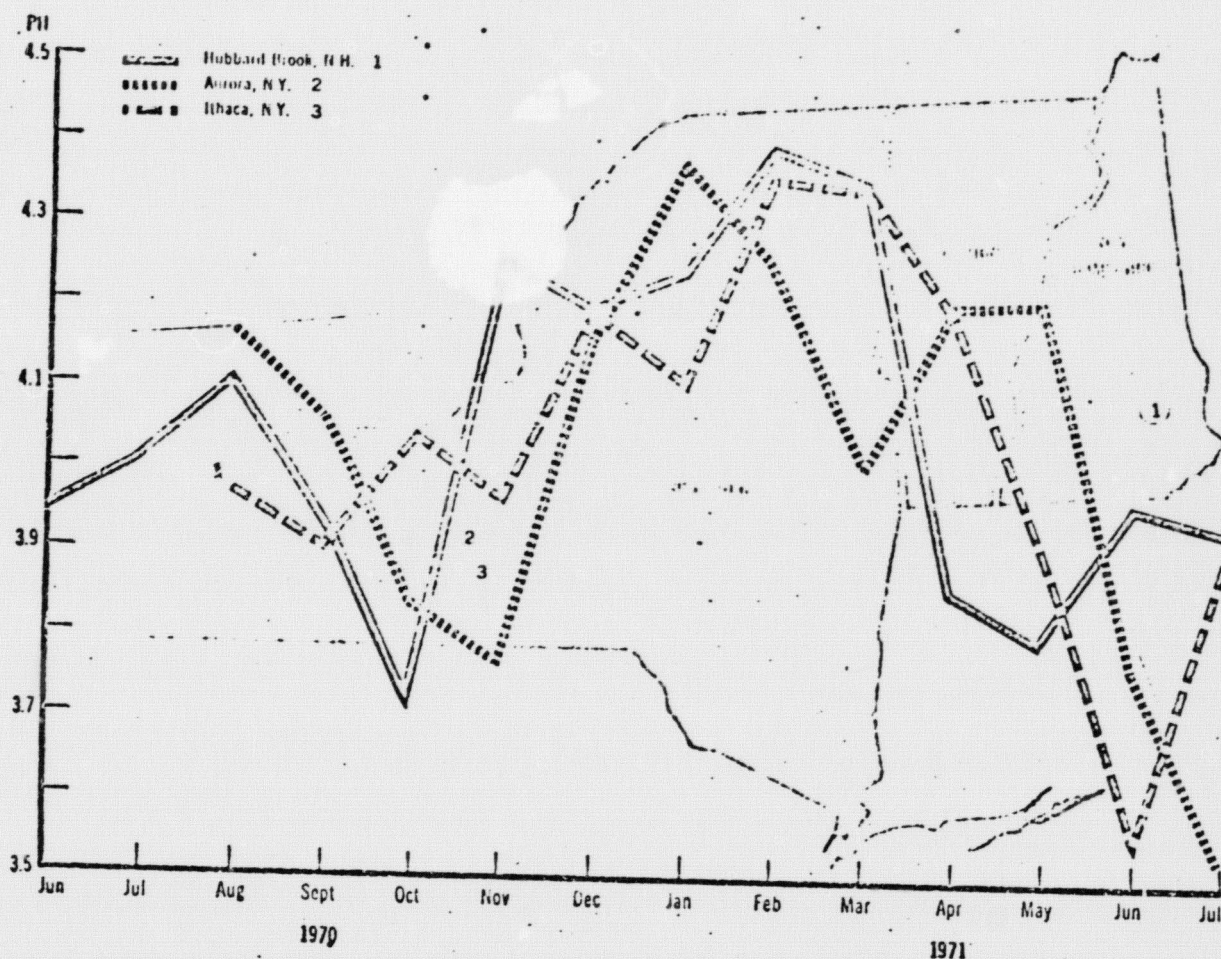
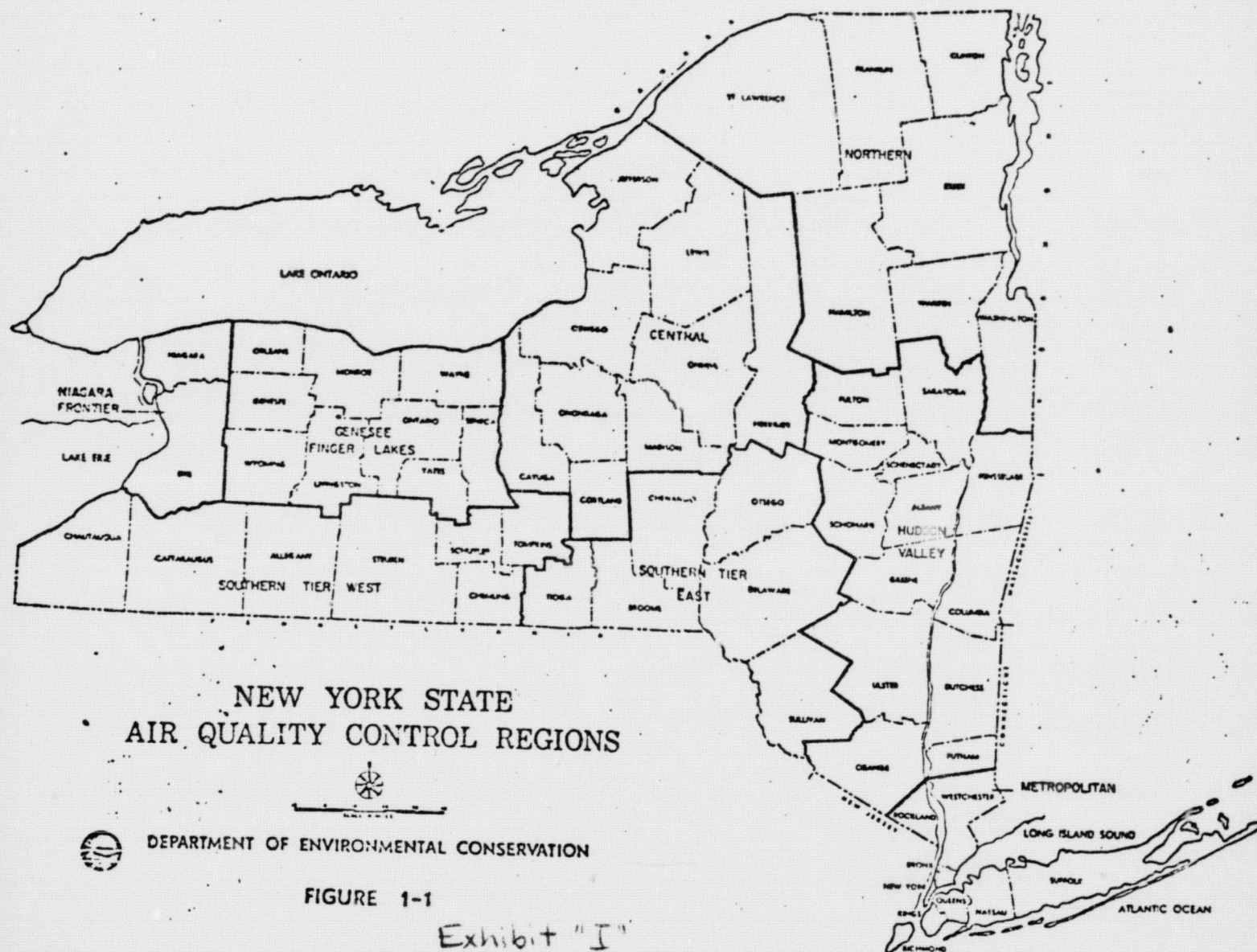


FIGURE 2

The acidity of rain in the Finger Lakes Region of New York State and at the Hubbard Brook Experimental Forest in New Hampshire is illustrated by low pH values during 1970 to 1971 at three sites. Annual averages, weighted to take into account the amount of precipitation that fell, were as follows: Hubbard Brook (June to June): 4.03; Aurora (August to August): 3.91; Ithaca (August to August): 3.98. Values of pH below 5 indicate unusually strong acids in rain. Low values have been found in rain in Massachusetts and Connecticut as well as in New York and New Hampshire.

present unclear, but a few long-term observations are interesting and suggestive. C. L. Schofield, Jr.¹¹ reports that the water chemistry of a relatively large clear-water, oligotrophic (deficient in plant nutrients and low in productivity) lake in the Adirondack Mountains of New York has changed appreciably since 1938: In December 1938, the alkalinity expressed as chemically equivalent concentrations of calcium carbonate ranged from 12.5 to 20.0 parts per million and the pH was 6.6 to 7.2, whereas during 1959-1960 the alkalinity ranged from 0 to 3.0 parts per million and the pH ranged from 3.9 to 5.8, demonstrating a sharp increase in acidity. Although the information prior to 1910 is scanty, it would appear that there was a significant jump in the sulfate content of Lake Michigan, the Illinois River, and possibly the Ohio River by 1920-1930, with a more gradual increase in concentration to the present time.¹² Significantly, in this regard, alkalinity values in Lake Michigan have decreased about 7 percent during the past 60 years, suggesting increased acidity. A similar decrease in alkalinity of about 2 percent in the Mississippi River was observed between 1911 and 1968. The pattern in the Illinois and Ohio rivers is more complex, with periods of



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TABLE B-6
EMISSION INVENTORY SUMMARY 1970
TUNS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
CARBON MONOXIDE

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	447	86	185	86	42
2. Distillate	59	7	31	6	6
3. Residual	1				
4. Gas	1				
5. Total - Residential	508	93	216	92	48
B. Commercial					
1. Anthracite - Area		25	217	51	
2.a. Bituminous - Area	367				57
2.b. Bituminous - Point			39		
3.a. Distillate - Area	23	2	5	1	1
3.b. Distillate - Point					
4.a. Residual - Area	19				
4.b. Residual - Point					
5. Gas					
6. Total - Commercial	409	27	261	52	58
C. Industrial					
1.a. Anthracite - Area		4			
1.b. Anthracite - Point					
2.a. Bituminous - Area	2			12	163
2.b. Bituminous - Point					
3.a. Distillate - Area	1	1	7	1	5
3.b. Distillate - Point					
4.a. Residual - Area	1		5	1	10
4.b. Residual - Point					
5. Gas	1				
6. Total - Industrial	5	5	12	14	12
D. Power Plant					190
1. Bituminous	400				
2. Distillate					
3. Residual	2				
4. Gas					
5. Total - Power Plant	402				
E. Total - Stationary Fuel	1,324	125	489	158	296
F. Processes					
1. Area			21		3
2. Point		264	263	46	
3. Total - Processes		264	284	46	3
G. Solid Waste					
1. Incineration					
2. On Site	8				
3. Municipal			8		
4. Total - Incineration	8		8		
5. Open Burning	1,891	392	1,891	392	270
6. Total	1,899	392	1,899	392	270
H. Transportation					
1. Gasoline Vehicles	169,528	23,686	89,031	21,763	17,376
2. Diesel	256	42	139	34	30
3. Aircraft	300				
4. Off Highway	2,735	4,650	4,650	1,368	2,735
5. Railroad	150				
6. Total - Transportation	172,969	28,378	93,820	23,165	20,141
I. Grand Total	176,192	29,159	96,489	23,761	20,710
Area Sources	175,790	28,895	96,190	23,715	20,710
Point Sources	402	264	301	46	

Exhibit "C", Page 1

Exhibit "I"
Air Pollution

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TABLE 8-6

EMISSION INVENTORY SUMMARY 1970

TONS/YEAR

HUDSON VALLEY AIR QUALITY CONTROL REGION
CARBON MONOXIDE (Cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County	Fuel Res.
I. Fuel Stationary Sources -						
A. Residential Area						1. Ar
1. Anthracite	151	283	34	232	211	2. Di
2. Distillate	6	19	10	31	21	3. R
3. Residual				1		4. C
4. Gas				1		5. T
5. Total - Residential	157	302	44	265	213	6. Co
B. Commercial						7. A
1. Anthracite - Area		216	54		116	8. A
2.a. Bituminous - Area	55			126		9. B
2.b. Bituminous - Point						10. B
3.a. Distillate - Area	1	6	1	8		11. D
3.b. Distillate - Point						12. D
4.a. Residual - Area				7		13. F
4.b. Residual - Point						14. F
5. Gas						15. C
6. Total - Commercial	56	222	55	141	122	16. T
C. Industrial						17. I
1.a. Anthracite - Area	11					18. A
1.b. Anthracite - Point						19. A
2.a. Bituminous - Area	8			16	12	20. B
2.b. Bituminous - Point		192			39	21. B
3.a. Distillate - Area	2	2	1			22. D
3.b. Distillate - Point						23. D
4.a. Residual - Area		6		1		24. F
4.b. Residual - Point						25. F
5. Gas						26. C
6. Total - Industrial	21	200	1	17	54	27. T
D. Power Plant						28. I
1. Bituminous		514				29. A
2. Distillate						30. B
3. Residual						31. D
4. Gas						32. F
5. Total - Power Plant		514	0	0		33. C
E. Total - Stationary Fuel	235	1,248	100	423	455	34. T
II. Processes						35. P
A. Area	0	0	0	0		36. A
B. Point	0	0	0	0	608	37. B
C. Total - Processes	0	0	0	0	608	38. C
III. Solid Waste						39. S
A. Incineration						40. A
1. On Site						41. 1
2. Municipal	5	16	2			42. 2
3. Total - Incineration	5	16	2		2	43. 3
B. Open Burning	639	1,933	530	1,245	1,063	44. B
C. Total	644	1,949	532	1,245	1,065	45. C
IV. Transportation						46. IV
A. Gasoline Vehicles	21,663	102,927	25,797	56,264	42,482	47. A
B. Diesel	38	159	39	89	68	48. A
C. Aircraft						49. C
D. Off Highway	4,103	4,377	547	3,556	3,009	50. D
E. Railroad						51. E
F. Total - Transportation	25,804	107,463	26,383	59,909	45,559	52. F
V. Grand Total						53. V
A. Area Sources	26,682	110,650	27,015	61,577	47,687	54. A
B. Point Sources	26,682	109,944	27,015	61,577	47,044	55. B
	0	706	0	0	643	

Exhibit "C", Page 2

Exhibit "I" -
Air Pollution

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TABLE 8-6
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
CARBON MONOXIDE (Cont.)

		Schenectady County	Schoharie County	Ulster County	Regional Total
	Fuel Stationary Sources				
	A. Residential Area				
	1. Anthracite	403	52	244	2,498
53	2. Distillate	37	4	24	266
26	3. Residual				2
-	4. Gas	1			3
-	5. Total - Residential	441	56	268	2,769
79	1. Commercial				
	1. Anthracite - Area	40	30	134	886
19	2.a. Bituminous - Area				605
	2.b. Bituminous - Point				39
	3.a. Distillate - Area	7	1	3	62
3	3.b. Distillate - Point				
	4.a. Residual - Area		1		27
	4.b. Residual - Point				
	5. Gas				
	6. Total - Commercial	47	32	137	1,619
122	2. Industrial				
	1.a. Anthracite - Area				15
	1.b. Anthracite - Point				
	2.a. Bituminous - Area	42		3	264
18	2.b. Bituminous - Point	66			293
35	3.a. Distillate - Area	5		1	27
1	3.b. Distillate - Point				
	4.a. Residual - Area				24
	4.b. Residual - Point				
	5. Gas				
	6. Total - Industrial	113		4	13
34	3. Power Plant				636
	1. Bituminous				592
	2. Distillate				
	3. Residual				3
	4. Gas				
	5. Total - Power Plant				595
455	Total - Stationary Fuel	601	88	409	5,619
	Processes				
	1. Area	39		55	118
609	2. Point	577		94	1,852
609	Total - Processes	616		149	1,970
	Solid Waste				
	Incineration				
	On Site				8
	Municipal	11	1		45
	Total - Incineration	11	1		53
061	Open Burning	1,290	241	1,542	13,319
063	Total	1,301	242	1,542	13,372
	Transportation				
1,442	Gasoline Vehicles	72,172	7,605	61,759	712,053
84	Marine	108	19	96	1,117
	Aircraft				300
3,000	22 Highway	821	4,924		40,484
	Railroad				150
3,330	Total - Transportation	73,101	12,548	64,864	754,104
7,747	Total Total	75,619	12,878	66,964	775,065
7,747	Area Sources	74,976	12,878	66,870	772,285
6-1	Point Sources	643		94	2,779

Exhibit "C", Page 3

Exhibit "I" -
Air Pollution

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TABLE 8-9 (Cont.)

EMISSION INVENTORY SUMMARY 1975
 TONS/YEAR
 HUDSON VALLEY AIR QUALITY CONTROL REGION
 CARBON MONOXIDE

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	196	43	93	43	21
2. Distillate	62	8	36	6	6
3. Residual					
4. Gas	2				
5. Total - Residential	260	51	129	49	27
B. Commercial					
1. Anthracite - Area		31	109	26	39
2.a. Bituminous - Area	376				
2.b. Bituminous - Point			39		
3.a. Distillate - Area	24	2	6	1	1
3.b. Distillate - Point					
4.a. Residual - Area	19				
4.b. Residual - Point					
5. Gas					
6. Total - Commercial	419	15	154	27	40
C. Industrial					
1.a. Anthracite - Area		2			
1.b. Anthracite - Point					
2.a. Bituminous - Area	2			10	109
2.b. Bituminous - Point					
3.a. Distillate - Area	1	1	8	1	5
3.b. Distillate - Point					
4.a. Residual - Area	1		5	1	10
4.b. Residual - Point					
5. Gas	1		14		13
6. Total - Industrial	5	3	27	12	137
D. Power Plant					
1. Bituminous					
2. Distillate					
3. Residual	17				
4. Gas					
5. Total - Power Plant	17				
E. Total - Stationary Fuel	701	69	310	88	204
II. Processes					
A. Area					
B. Point					
C. Total - Processes					
III. Solid Waste					
A. Incineration					
1. On Site	8				
2. Municipal					
3. Total - Incineration	8		8		
B. Open Burning	946	196	946	196	135
C. Total	954	196	954	196	135
IV. Transportation					
A. Gasoline Vehicles	117147	17024	58762	14365	12240
B. Diesel	166	94	27	22	21
C. Aircraft	360				
D. Off Highway	2735	4650	4650	1368	1927
E. Railroad	150				
F. Total - Transportation	120558	21768	63439	15755	14188
V. Grand Total	122213	22033	64703	16039	14527
A. Area Sources	122196	22033	64664	16039	14527
B. Point Sources	17		39		

Exhibit "D", Page 1

Exhibit "I"
 Air Pollution

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TABLE B-9 (Cont.)

EMISSION INVENTORY SUMMARY 1975
 TONS/YEAR
 HUDSON VALLEY AIR QUALITY CONTROL REGION
 CARBON MONOXIDE (cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	75	191	17	116	126
2. Distillate	6	27	13	36	31
3. Residual					
4. Gas					
5. Total - Residential	81	218	30	154	157
B. Commercial					
1. Anthracite - Area		108	27		59
2.a. Bituminous - Area	36			84	
2.b. Bituminous - Point					
3.a. Distillate - Area	1	9	1	9	3
3.b. Distillate - Point					
4.a. Residual - Area				8	
4.b. Residual - Point					
5. Gas					
6. Total - Commercial	37	117	28	101	62
C. Industrial					
1.a. Anthracite - Area	5				
1.b. Anthracite - Point					
2.a. Bituminous - Area	6			10	12
2.b. Bituminous - Point		192			35
3.a. Distillate - Area	2	2	1		1
3.b. Distillate - Point					
4.a. Residual - Area		6		1	
4.b. Residual - Point					
5. Gas					
6. Total - Industrial	13	200	1	11	48
D. Power Plant					
1. Bituminous					
2. Distillate					
3. Residual		16			
4. Gas					
5. Total - Power Plant		16			
E. Total - Stationary Fuel	131	551	59	266	267
II. Processes					
A. Area					
B. Point					
C. Total - Processes					
III. Solid Waste					
A. Incineration					
1. On Site					
2. Municipal	5	16	2		2
3. Total - Incineration	5	16	2		2
B. Open Burning	319	967	265	1245	531
C. Total	324	983	267	1245	533
IV. Transportation					
A. Gasoline Vehicles	14298	81518	66359	30001	38300
B. Diesel	24	118	43	59	58
C. Aircraft					
D. Off Highway	4103	4377	547	3556	3009
E. Railroad					
F. Total - Transportation	18425	86013	66949	33616	41367
V. Grand Total	18880	87547	67275	35127	42167
A. Area Sources	18880	87339	67275	35127	42132
B. Point Sources		208			35

Exhibit "D", Page 2
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 Air Pollution

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TABLE 8-9 (Cont.)

EMISSION INVENTORY SUMMARY 1975
 TONS/YEAR
 HUDSON VALLEY AIR QUALITY CONTROL REGION
 CARBON MONOXIDE (cont.)

	Schenectady County	Schoharie County	Ulster County	Regional Total
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	201	26	122	1270
2. Distillate	39	4	30	304
3. Residual	1			1
4. Gas	1			4
5. Total - Residential	241	30	152	1579
B. Commercial				
1. Anthracite - Area	20	15	67	444
2.a. Bituminous - Area				535
2.b. Bituminous - Point				39
3.a. Distillate - Area	7	1	3	68
3.b. Distillate - Point				
4.a. Residual - Area		1		28
4.b. Residual - Point				
5. Gas				
6. Total - Commercial	27	17	70	1114
C. Industrial				
1.a. Anthracite - Area				7
1.b. Anthracite - Point				
2.a. Bituminous - Area	28		3	180
2.b. Bituminous - Point	66			293
3.a. Distillate - Area	5		1	28
3.b. Distillate - Point				
4.a. Residual - Area				24
4.b. Residual - Point				
5. Gas				28
6. Total - Industrial	99		4	560
D. Power Plant				
1. Bituminous				
2. Distillate				
3. Residual				
4. Gas				33
5. Total - Power Plant				33
E. Total - Stationary Fuel	367	47	226	3286
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site	11	1		53
2. Municipal	11	1		53
3. Total - Incineration	645	170	771	7332
B. Open Burning	656	171	771	7385
C. Total				
IV. Transportation				
A. Gasoline Vehicles	50158	5491	48465	554128
B. Diesel	71	13	71	787
C. Aircraft				360
D. Off Highway	821	4924	3009	39676
E. Railroad				150
F. Total - Transportation	51050	10428	51545	595101
V. Grand Total	52073	10646	52542	605772
A. Area Sources	52007	10646	52542	605407
B. Point Sources	66			365

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TABLE B-6
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
CARBON MONOXIDE

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	991	197	234	267
2. Distillate	21	7	7	9
3. Residual				
4. Gas	1			
5. Total - Residential	1013	204	241	276
B. Commercial				
1. Anthracite - Area	271	45	43	55
2.a. Bituminous - Area				
2.b. Bituminous - Point				
3.a. Distillate - Area	5	1	1	2
3.b. Distillate - Point				
4.a. Residual - Area	16			
4.b. Residual - Point				
5. Gas				
6. Total - Commercial	292	46	44	57
C. Industrial				
1.a. Anthracite - Area	781			
1.b. Anthracite - Point				
2.a. Bituminous - Area	21		1	
2.b. Bituminous - Point				
3.a. Distillate - Area	5	2	6	1
3.b. Distillate - Point				
4.a. Residual - Area				
4.b. Residual - Point			1	
5. Gas				
6. Total - Industrial	807	2	8	1
D. Power Plant				
1. Bituminous	94	51		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	94	51		
E. Total - Stationary Fuel	2206	303	293	334
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site	1			
2. Municipal				
3. Total - Incineration	1			
B. Open Burning	1555	498	483	679
C. Total	1556	498	483	679
IV. Transportation				
A. Gasoline Vehicles	97,642	15,857	13,730	17,059
B. Diesel	152	35	37	39
C. Aircraft	91			
D. Off Highway	4,650	7,659	10,942	9,027
E. Railroad				
F. Total - Transportation	102,535	23,551	24,709	26,125
V. Grand Total				
A. Area Sources	106,297	24,359	25,485	27,138
B. Point Sources	106,187	24,301	25,484	27,138
	110	51	1	

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Exhibit "I" -
Air Pollution

TABLE 8-6
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
CARBON MONOXIDE (Cont.)

	Sullivan County	Tioga County	Regional Total
1. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	134	199	2022
2. Distillate	11	5	60
3. Residual			
4. Gas			1
5. Total - Residential	145	204	2083
B. Commercial			
1. Anthracite - Area	25	46	485
2.a. Bituminous - Area			
2.b. Bituminous - Point			
3.a. Distillate - Area	3	1	13
3.b. Distillate - Point			
4.a. Residual - Area			
4.b. Residual - Point			16
5. Gas			
6. Total - Commercial	28	47	514
C. Industrial			
1.a. Anthracite - Area			781
1.b. Anthracite - Point			
2.a. Bituminous - Area		1	23
2.b. Bituminous - Point			
3.a. Distillate - Area		2	16
3.b. Distillate - Point			
4.a. Residual - Area			
4.b. Residual - Point			1
5. Gas			
6. Total - Industrial		3	821
D. Power Plant			
1. Bituminous			145
2. Distillate			
3. Residual			
4. Gas			
5. Total - Power Plant			145
E. Total - Stationary Fuel	173		3563
Processes			
1. Area			
1. Point			
2. Total - Processes			
Solid Waste			
Incineration			
1. On Site			
2. Municipal	2		3
3. Total - Incineration	2		3
Open Burning	481	503	4199
Total	483	503	4202
Transportation			
Gasoline Vehicles	27,672	15,687	137,647
Diesel	45	29	337
Aircraft			91
Off Highway	2,462	4103	38,843
Railroad			
Total - Transportation	30,179	19,819	226,918
Grand Total	30,835	20,576	234,683
Area Sources	30,835	20,576	234,521
Point Sources			162

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TABLE 8-9 (Cont.)
EMISSION INVENTORY SUMMARY 1975
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
CARBON MONOXIDE

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	495	98	117	134
2. Distillate	23	8	8	11
3. Residual				
4. Gas	1			
5. Total - Residential	518	106	125	145
B. Commercial				
1. Anthracite - Area	135	23	22	27
2.a.Bituminous - Area				
2.b.Bituminous - Point				
3.a.Distillate - Area	6	1	1	2
3.b.Distillate - Point				
4.a.Residual - Area	16			
4.b.Residual - Point				
5. Gas				
6. Total - Commercial	157	23	23	29
C. Industrial				
1.a.Anthracite - Area	390			
1.b.Anthracite - Point				
2.a.Bituminous - Area	14		1	
2.b.Bituminous - Point				
3.a.Distillate - Area	6	2	7	1
3.b.Distillate - Point				
4.a.Residual - Area			1	
4.b.Residual - Point				
5. Gas				
6. Total - Industrial	410	2	9	1
D. Power Plant				
1. Bituminous	94	51		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	94	51		
E. Total - Stationary Fuel				
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site				
2. Municipal	1			
3. Total - Incineration	1			
B. Open Burning	777	249	241	339
C. Total	779	249	241	339
IV. Transportation				
A. Gasoline Vehicles	67,215	11,219	9,306	12,182
B. Diesel	98	23	24	26
C. Aircraft	109			
D. Off Highway	4650	7659	10,942	9027
E. Railroad				
F. Total - Transportation	72,072	18,901	20,272	21,235
V. Grand Total	74,030	19,333	20,670	21,749
A. Area Sources	73,920	19,282	20,669	21,749
B. Point Sources	110	51	1	

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Exhibit "I" -
Air Pollution

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TABLE 8-9 (Cont.)
EMISSION INVENTORY SUMMARY 1975
TUNS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
CARBON MONOXIDE (Cont.)

	Sullivan County	Tioga County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	67	99	1010
2. Distillate	11	7	68
3. Residual			
4. Gas			
5. Total - Residential	78	106	1078
B. Commercial			
1. Anthracite - Area	13	23	243
2.a. Bituminous - Area			
2.b. Bituminous - Point			
3.a. Distillate - Area	3	1	14
3.b. Distillate - Point			
4.a. Residual - Area			16
4.b. Residual - Point			
5. Gas			
6. Total - Commercial	16	24	273
C. Industrial			
1.a. Anthracite - Area			390
1.b. Anthracite - Point			
2.a. Bituminous - Area		1	16
2.b. Bituminous - Point			
3.a. Distillate - Area		2	18
3.b. Distillate - Point			
4.a. Residual - Area			1
4.b. Residual - Point			
5. Gas			
6. Total - Industrial		3	425
D. Power Plant			
1. Bituminous			145
2. Distillate			
3. Residual			
4. Gas			
5. Total - Power Plant			145
E. Total - Stationary Fuel			
II. Processes			
A. Area			
B. Point			
C. Total - Processes			
III. Solid Waste			
A. Incineration			
1. On Site			3
2. Municipal	2		
3. Total - Incineration	2		3
B. Open Burning	240	251	2097
C. Total	244	251	2103
IV. Transportation			
A. Gasoline Vehicles	21,204	12,735	133,861
B. Diesel	32	22	225
C. Aircraft			109
D. Off Highway	2462	4103	38,843
E. Railroad			
F. Total - Transportation	23,698	16,860	173,038
V. Grand Total	24,036	17,244	177,062
A. Area Sources	24,036	17,244	176,907
B. Point Sources			155

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Air Pollution

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TABLE 8-7
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
HYDROCARBONS

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	27	5	11	5	2
2. Distillate	59	18	78	15	14
3. Residual	1	10	4		
4. Gas			27	24	1
5. Total - Residential	87	33	120	44	17
B. Commercial					
1. Anthracite - Area		1	13	3	2
2.a. Bituminous - Area	22				
2.b. Bituminous - Point			777		30
3.a. Distillate - Area	23	4	13	3	5
3.b. Distillate - Point					
4.a. Residual - Area	19	4	23	4	5
4.b. Residual - Point					
5. Gas		3	9	4	
6. Total - Commercial	64	12	835	14	42
C. Industrial					
1.a. Anthracite - Area					
1.b. Anthracite - Point					
2.a. Bituminous - Area		8		8	8
2.b. Bituminous - Point				113	
3.a. Distillate - Area	7	1	17	1	2
3.b. Distillate - Point					
4.a. Residual - Area	20	6	56	6	
4.b. Residual - Point					
5. Gas		2	12	2	
6. Total - Industrial	27	17	85	130	10
D. Power Plant					
1. Bituminous	120				
2. Distillate			2		2
3. Residual	25				
4. Gas					
5. Total - Power Plant	145		2		2
E. Total - Stationary Fuel	323	62	1042	188	71
II. Processes					
A. Area	10		21		3
B. Point	831	264	263	46	
C. Total - Processes	841	264	284	46	3
III. Solid Waste					
A. Incineration					
1. On Site	16				
2. Municipal			22		
3. Total - Incineration	16		22		
B. Open Burning	1513	314	1345	465	338
C. Total	1529	314	1367	465	338
IV. Transportation					
A. Gasoline Vehicles	26545	3710	13941	3408	2721
B. Diesel	1364	224	742	183	159
C. Aircraft	766				
D. Off Highway	428	727	727	214	428
E. Railroad	800				
F. Total - Transportation	29903	4661	15410	3805	3308
V. Grand Total	32596	5301	18103	4504	3720
A. Area Sources	31620	5037	17061	4345	3688
B. Point Sources	976	264	1042	159	32

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Air Pollution

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TABLE 8-7

EMISSION INVENTORY SUMMARY 1970

TONS/YEAR

HUDSON VALLEY AIR QUALITY CONTROL REGION

HYDROCARBONS (cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	9	17	2	14	15
2. Distillate	16	48	25	31	61
3. Residual		1		1	1
4. Gas	26	83	1		22
5. Total - Residential	51	149	28	46	100
B. Commercial					
1. Anthracite - Area	3	13	3		7
2.a. Bituminous - Area				8	
2.b. Bituminous - Point					
3.a. Distillate - Area	3	15	3	8	7
3.b. Distillate - Point					
4.a. Residual - Area	4	21	4	7	8
4.b. Residual - Point					
5. Gas	5	15	1		5
6. Total - Commercial	15	64	11	23	27
C. Industrial					
1.a. Anthracite - Area	2				
1.b. Anthracite - Point					
2.a. Bituminous - Area	163	45		5	365
2.b. Bituminous - Point		76			76
3.a. Distillate - Area	3	14	1	1	1
3.b. Distillate - Point					
4.a. Residual - Area	14	30	3	15	3
4.b. Residual - Point		71			
5. Gas	12	18			3
6. Total - Industrial	194	254	4	21	107
D. Power Plant					
1. Bituminous		77			
2. Distillate					
3. Residual		71			
4. Gas					
5. Total - Power Plant		148			
E. Total - Stationary Fuel	260	615	43	90	125
II. Processes					
A. Area	4	24		11	
B. Point	115	414		73	
C. Total - Processes	119	438		84	
III. Solid Waste					
A. Incineration					
1. On Site					3
2. Municipal	10	32	3	1	
3. Total - Incineration	10	32	3	1	3
B. Open Burning	511	1547	424	196	850
C. Total	521	1579	427	197	853
IV. Transportation					
A. Gasoline Vehicles	3392	16117	4038	8810	6653
B. Diesel	204	850	209	474	367
C. Aircraft					
D. Off Highway	642	684	86	556	470
E. Railroad					
F. Total - Transportation	4238	17651	4333	9840	7493
V. Grand Total					
A. Area Sources	5138	20283	4803	10211	9500
B. Point Sources	5023	19574	4803	10138	8556
	115	709		73	704

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Air Pollution

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TABLE B-7

EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
HYDROCARBONS (cont.)

Schenectady County	Schoharie County	Ulster County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	24	3	149
2. Distillate	91	11	532
3. Residual	2		21
4. Gas	128		392
5. Total - Residential	245	14	1094
B. Commercial			
1. Anthracite - Area	2	2	57
2.a. Bituminous - Area		8	30
2.b. Bituminous - Point			841
3.a. Distillate - Area	17	2	109
3.b. Distillate - Point		34	
4.a. Residual - Area	16	2	135
4.b. Residual - Point		18	
5. Gas	15		61
6. Total - Commercial	50	4	1233
C. Industrial			
1.a. Anthracite - Area			2
1.b. Anthracite - Point			
2.a. Bituminous - Area	842		1504
2.b. Bituminous - Point	1325	1	2218
3.a. Distillate - Area	13		65
3.b. Distillate - Point		3	
4.a. Residual - Area	18		215
4.b. Residual - Point		43	71
5. Gas	16		66
6. Total - Industrial	2214	2	4141
D. Power Plant			
1. Bituminous		105	197
2. Distillate	13		
3. Residual			17
4. Gas			96
5. Total - Power Plant	13		310
E. Total - Stationary Fuel	2522	22	6778
II. Processes			
A. Area			
B. Point			
C. Total - Processes			
			73
			2006
			2079
III. Solid Waste			
A. Incineration			
1. On Site	23		42
2. Municipal			69
3. Total - Incineration	23	1	111
B. Open Burning			
	1032	193	9961
C. Total			
	1055	194	10072
IV. Transportation			
A. Gasoline Vehicles			
B. Diesel	11301	1192	111499
C. Aircraft	578	99	5959
D. Off Highway			766
E. Railroad	128	770	6330
F. Total - Transportation	12007	2061	125354
V. Grand Total			
A. Area Sources	15584	2277	144283
B. Point Sources	14246	2277	138837
	1338		5446

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Air Pollution

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TABLE 8 - 10

EMISSION INVENTORY SUMMARY 1975

TONS/YEAR

HUDSON VALLEY AIR QUALITY CONTROL REGION
HYDROCARBONS

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	12	3	6	3	1
2. Distillate	62	19	90	16	15
3. Residual		10	4		
4. Gas			31	25	1
5. Total - Residential	74	32	131	44	17
B. Commercial					
1. Anthracite - Area		1	7	2	1
2.a. Bituminous - Area	23				
2.b. Bituminous - Point			777		30
3.a. Distillate - Area	24	4	15	3	5
3.b. Distillate - Point					
4.a. Residual - Area	19	4	23	4	5
4.b. Residual - Point					
5. Gas		3	10	4	
6. Total - Commercial	66	12	832	13	41
C. Industrial					
1.a. Anthracite - Area					
1.b. Anthracite - Point					
2.a. Bituminous - Area		5		5	5
2.b. Bituminous - Point				113	
3.a. Distillate - Area	7	1	20	1	2
3.b. Distillate - Point					
4.a. Residual - Area	21	6	56	6	
4.b. Residual - Point					
5. Gas		2	14	2	
6. Total - Industrial	28	14	90	127	7
D. Power Plant					
1. Bituminous					
2. Distillate					
3. Residual	252		2		2
4. Gas					
5. Total - Power Plant	252		2		
E. Total - Stationary Fuel	420	58	1055	184	67
II. Processes					
A. Area	10				
B. Point	830	264	21		3
C. Total - Processes	840	264	263	46	
			284	46	3
III. Solid Waste					
A. Incineration					
1. On Site	16				
2. Municipal					
3. Total - Incineration	16		22		
B. Open Burning	757	157	673	233	169
C. Total	773	157	695	233	169
IV. Transportation					
A. Gasoline Vehicles	13,896	2020	8804	1748	1437
B. Diesel	550	94	361	72	65
C. Aircraft	919				
D. Off Highway	428	727	727	214	428
E. Railroad	800				
F. Total - Transportation	16,593	2841	9692	2034	1930
V. Grand Total					
A. Area Sources	18,626	3320	11,926	2497	2169
B. Point Sources	17,544	3056	10,684	2338	2137
	1,082	264	1,042	159	32

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Air Pollution

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TABLE 8 - 10
EMISSION INVENTORY SUMMARY 1975
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
HYDROCARBONS (Cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	4	8	1	7	8
2. Distillate	16	68	33	36	79
3. Residual		1		1	1
4. Gas	26	113	1		94
5. Total - Residential	46	190	35	44	182
B. Commercial					
1. Anthracite - Area	2	7	2		4
2.a. Bituminous - Area				6	
2.b. Bituminous - Point					
3.a. Distillate - Area	3	22	3	8	9
3.b. Distillate - Point					
4.a. Residual - Area	4	30	4	7	8
4.b. Residual - Point					
5. Gas	5	22	1		6
6. Total - Commercial	14	81	10	21	23
C. Industrial					
1.a. Anthracite - Area					
1.b. Anthracite - Point					
2.a. Bituminous - Area	108	30		5	247
2.b. Bituminous - Point		76			704
3.a. Distillate - Area	3	24	1	1	1
3.b. Distillate - Point					
4.a. Residual - Area	14	30	3	15	3
4.b. Residual - Point		71			
5. Gas	12	26			2
6. Total - Industrial	137	257	4	21	957
D. Power Plant					
1. Bituminous					
2. Distillate					
3. Residual		235			
4. Gas					
5. Total - Power Plant		235			
E. Total - Stationary Fuel	197	763	49	86	1,162
II. Processes					
A. Area	2	16	1	11	0
B. Point	115	287		74	608
C. Total - Processes	117	303	1	85	608
III. Solid Waste					
A. Incineration					
1. On Site					
2. Municipal	10	32	3	1	
3. Total - Incineration	10	32	3	1	3
B. Open Burning	255	773	212	98	425
C. Total	265	805	215	99	428
IV. Transportation					
A. Gasoline Vehicles	1696	9670	3608	4713	4,544
B. Diesel	79	393	144	195	189
C. Aircraft					
D. Off Highway	642	684	86	556	470
E. Railroad					
F. Total - Transportation	2417	10,747	3838	5464	5,203
V. Grand Total	2996	12,618	4103	5734	7,405
A. Area Sources	2881	11,949	4103	5660	6,093
B. Point Sources	115	669		74	1,312

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Air Pollution

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TABLE B - 10
EMISSION INVENTORY SUMMARY 1975
TUNS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
HYDROCARBONS (Cont.)

	Schenectady County	Schoharie County	Ulster County	Regional Total
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	12	2	8	75
2. Distillate	96	12	75	617
3. Residual	2		1	20
4. Gas	134		30	455
5. Total - Residential	244	14	114	1167
B. Commercial				
1. Anthracite - Area				
2.a. Bituminous - Area	1	1	4	32
2.b. Bituminous - Point			23	52
3.a. Distillate - Area				607
3.b. Distillate - Point	18	2	7	123
4.a. Residual - Area				
4.b. Residual - Point	16	2	18	144
5. Gas	16			
6. Total - Commercial	30	4	53	72
C. Industrial				
1.a. Anthracite - Area				
1.b. Anthracite - Point				
2.a. Bituminous - Area	564		38	1007
2.b. Bituminous - Point	1,325			2218
3.a. Distillate - Area	14	1	4	80
3.b. Distillate - Point				
4.a. Residual - Area	18	1	43	216
4.b. Residual - Point				
5. Gas	17		2	71
6. Total - Industrial	1,938	2	87	77
D. Power Plant				3669
1. Bituminous				
2. Distillate	13			17
3. Residual				487
4. Gas				
5. Total - Power Plant	13			504
E. Total - Stationary Fuel	2,245	20	254	6569
II. Processes				
A. Area	28	0	53	145
B. Point	376	0	94	2957
C. Total - Processes	404	0	147	3102
III. Solid Waste				
A. Incineration				
1. On Site				16
2. Municipal				46
3. Total - Incineration	23	1		111
B. Open Burning	516	97	617	4982
C. Total	539	98	617	5093
IV. Transportation				
A. Gasoline Vehicles	5,950	652	5,749	64,487
B. Diesel	234	42	235	2,653
C. Aircraft				919
D. Off Highway	128	770	470	6,330
E. Railroad				800
F. Total - Transportation	6,312	1,464	6,454	75,189
V. Grand Total	9,500	1,582	7,472	89,954
A. Area Sources	7,799	1,582	7,355	83,397
B. Point Sources	1,701		117	6557

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Air Pollution

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TABLE 8-7

EMISSION INVENTORY SUMMARY 1970

TONS/YEAR

SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
HYDROCARBONS

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	59	12	14	16
2. Distillate	53	19	17	22
3. Residual	3			
4. Gas	209	11	8	1
5. Total - Residential	324	42	39	39
B. Commercial				
1. Anthracite - Area	13	3	3	3
2. Bituminous - Area				
3. Bituminous - Point	344			
4. Distillate - Area	12	3	3	4
5. Distillate - Point				
6. Residual - Area	14	5	4	10
7. Residual - Point				
8. Gas	46	2	1	2
9. Total - Commercial	429	13	11	19
C. Industrial				
1. Anthracite - Area	47			
2. Anthracite - Point				
3. Bituminous - Area	422		16	
4. Bituminous - Point				
5. Distillate - Area	13	5	4	1
6. Distillate - Point				
7. Residual - Area	15	10	10	3
8. Residual - Point				
9. Gas	41	3	2	1
10. Total - Industrial	538	18	32	5
D. Power Plant				
1. Bituminous	38	20		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	38	20		
E. Total - Stationary Fuel	1329	93	82	63
II. Processes				
A. Area	100			
B. Point	492		62	
C. Total - Processes	592		62	
III. Solid Waste				
A. Incineration				
1. On Site				
2. Municipal	1			
3. Total - Incineration	1			
B. Open Burning	1244	398	387	543
C. Total	1245	398	387	543
IV. Transportation				
A. Gasoline Vehicles	15,290	2484	2152	2673
B. Diesel	810	186	195	207
C. Aircraft	232			
D. Off Highway	727	1198	1711	1411
E. Railroad				
F. Total - Transportation	17,059	3868	4058	4291
V. Grand Total	20,225	4359	4589	4897
A. Area Sources	19,351	4339	4525	4897
B. Point Sources	874	20	62	

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Air Pollution

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TABLE B-7
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
HYDROCARBONS (Cont.)

	Sullivan County	Tioga County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	8	12	121
2. Distillate	28	13	152
3. Residual			3
4. Gas		16	245
5. Total - Residential	36	41	521
B. Commercial			
1. Anthracite - Area	1	3	26
2.a. Bituminous - Area			344
2.b. Bituminous - Point			31
3.a. Distillate - Area	7	2	
3.b. Distillate - Point			46
4.a. Residual - Area	13		67
4.b. Residual - Point			514
5. Gas		16	
6. Total - Commercial	21	21	
C. Industrial			
1.a. Anthracite - Area			47
1.b. Anthracite - Point			457
2.a. Bituminous - Area		19	
2.b. Bituminous - Point			29
3.a. Distillate - Area	1	5	
3.b. Distillate - Point			51
4.a. Residual - Area	3	10	
4.b. Residual - Point			51
5. Gas		4	635
6. Total - Industrial	4	38	
D. Power Plant			
1. Bituminous			58
2. Distillate			
3. Residual			
4. Gas			
5. Total - Power Plant			58
E. Total - Stationary Fuel	61	100	1728
II. Processes			
A. Area			100
B. Point			554
C. Total - Processes			654
III. Solid Waste			
A. Incineration			
1. On Site			4
2. Municipal	3		4
3. Total - Incineration	3		
B. Open Burning	385	402	3359
C. Total	388	402	3363
IV. Transportation			
A. Gasoline Vehicles	4333	2456	29,388
B. Diesel	239	157	1794
C. Aircraft			232
D. Off Highway	385	642	6074
E. Railroad			
F. Total - Transportation	4957	3255	37,488
V. Grand Total	5406	3757	43,233
A. Area Sources	5406	3757	42,277
B. Point Sources			956

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Air Pollution

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TABLE 8 - 10

EMISSION INVENTORY SUMMARY 1975

TONS/YEAR

SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
HYDROCARBONS

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	30	6	7	8
2. Distillate	58	23	19	26
3. Residual	3			
4. Gas	230	13	9	1
5. Total - Residential	321	42	35	35
B. Commercial				
1. Anthracite - Area	7	2	2	2
2. Bituminous - Area				
2.b. Bituminous - Point	344			
3.a. Distillate - Area	13	4	3	5
3.b. Distillate - Point				
4.a. Residual - Area	14	5	4	10
4.b. Residual - Point				
5. Gas	51	2	1	2
6. Total - Commercial	429	13	10	19
C. Industrial				
1.a. Anthracite - Area	24			
1.b. Anthracite - Point				
2.a. Bituminous - Area	283		19	
2.b. Bituminous - Point				
3.a. Distillate - Area	14	6	4	1
3.b. Distillate - Point				
4.a. Residual - Area	15	10	10	3
4.b. Residual - Point				
5. Gas	45	4	2	1
6. Total - Industrial	381	20	35	5
D. Power Plant				
1. Bituminous	38	20		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	38	20		
E. Total - Stationary Fuel	1169	95	80	59
II. Processes				
A. Area	17			
B. Point	116		62	1
C. Total - Processes	133		62	1
III. Solid Waste				
A. Incineration				
1. On Site				
2. Municipal	1			
3. Total - Incineration	1			
B. Open Burning	622	199	193	276
C. Total	623	199	193	276
IV. Transportation				
A. Gasoline Vehicles	7974	1331	1105	1446
B. Diesel	325	77	77	86
C. Aircraft	278			
D. Off Highway	727	1198	1711	1411
E. Railroad				
F. Total - Transportation	9304	2606	2893	2943
V. Grand Total	11,229	2900	3227	3279
A. Area Sources	10,731	2878	3164	3279
B. Point Sources	498	20	63	

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 Air Pollution

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TABLE B - 10
EMISSION INVENTORY SUMMARY 1975
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
HYDROCARBONS (Cont.)

	Sullivan County	Tioga County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	4	6	61
2. Distillate	29	16	171
3. Residual			3
4. Gas		19	272
5. Total - Residential	33	41	507
B. Commercial			
1. Anthracite - Area	1	2	16
2.a.Bituminous - Area			344
2.b.Bituminous - Point			34
3.a.Distillate - Area	7	2	
3.b.Distillate - Point			
4.a.Residual - Area	13		46
4.b.Residual - Point			
5. Gas		19	75
6. Total - Commercial	21	23	515
C. Industrial			
1.a.Anthracite - Area			24
1.b.Anthracite - Point			
2.a.Bituminous - Area		13	315
2.b.Bituminous - Point			1
3.a.Distillate - Area	1	6	31
3.b.Distillate - Point			
4.a.Residual - Area	3	10	51
4.b.Residual - Point			
5. Gas		4	56
6. Total - Industrial	4	33	478
D. Power Plant			
1. Bituminous			58
2. Distillate			
3. Residual			
4. Gas			
5. Total - Power Plant			58
E. Total - Stationary Fuel	58	97	1558
II. Processes			
A. Area		1	19
B. Point			178
C. Total - Processes		1	197
III. Solid Waste			
A. Incineration			
1. On Site			
2. Municipal	3		4
3. Total - Incineration	3		4
B. Open Burning	193	201	1634
C. Total	196	201	1608
IV. Transportation			
A. Gasoline Vehicles	2515	1510	15,801
B. Diesel	107	74	746
C. Aircraft			278
D. Off Highway	385	642	6074
E. Railroad			
F. Total - Transportation	3007	2226	22,979
V. Grand Total			
A. Area Sources	3260	2525	26,422
B. Point Sources	1		580

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Air Pollution

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TABLE H-8
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	179	34	74	34	17
2. Distillate	2127	248	1096	210	200
3. Residual	49	7	92	2	
4. Gas	379	25	70	61	2
5. Total - Residential	2734	314	1332	307	219
B. Commercial					
1. Anthracite - Area		10	21	21	16
2.a. Bituminous - Area					
2.b. Bituminous - Point			775		30
3.a. Distillate - Area	844	55	45	45	22
3.b. Distillate - Point					111
4.a. Residual - Area	556	64	96	96	111
4.b. Residual - Point	126	38	146		
5. Gas	104	7	9	9	1
6. Total - Commercial	1777	174	1092	171	291
C. Industrial					
1.a. Anthracite - Area		2	2		1
1.b. Anthracite - Point					
2.a. Bituminous - Area	34	8		113	
2.b. Bituminous - Point				113	
3.a. Distillate - Area	173	20	234	20	13
3.b. Distillate - Point					
4.a. Residual - Area	28	43	927	42	176
4.b. Residual - Point	462	108	415	34	
5. Gas	271	5	30	8	
6. Total - Industrial	968	186	1608	330	190
D. Power Plant					
1. Bituminous	7200				
2. Distillate			50		79
3. Residual	622				
4. Gas			50		79
5. Total - Power Plant	7822		100		158
E. Total - Stationary Fuel	13,301	674	4132	808	858
II. Processes					
A. Area					
B. Point					
C. Total - Processes					
III. Solid Waste					
A. Incineration					
1. On Site	23				
2. Municipal			33		
3. Total - Incineration	23		33		
B. Open Burning	11	2	10	3	2
C. Total	34	2	43	3	2
IV. Transportation					
A. Gasoline Vehicles	18,516	7187	10,046	2401	1955
B. Diesel	938	154	510	126	109
C. Aircraft	108				
D. Off Highway	85	144	144	42	85
E. Railroad	550				
F. Total - Transportation	20,197	7485	10,700	2569	2149
V. Grand Total	33,532	8161	14,875	3380	3009
A. Area Sources	25,122	8015	13,439	3233	2710
B. Point Sources	8,410	146	1,436	147	299

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Air Pollution

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TABLE B-8
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (Cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	60	113	13	93	101
2. Distillate	223	669	347	1,104	907
3. Residual	2	32		26	14
4. Gas	67	214	2	197	200
5. Total - Residential	352	1,028	362	1,420	1,222
B. Commercial					
1. Anthracite - Area	22	86	22	0	48
2.a. Bituminous - Area				50	
2.b. Bituminous - Point				0	
3.a. Distillate - Area	45	210	43	290	95
3.b. Distillate - Point				0	
4.a. Residual - Area	94	165	86	154	148
4.b. Residual - Point		325		80	43
5. Gas	12	38	3	36	12
6. Total - Commercial	173	824	154	610	346
C. Industrial					
1.a. Anthracite - Area	2				
1.b. Anthracite - Point					
2.a. Bituminous - Area	163	45		9	368
2.b. Bituminous - Point				270	704
3.a. Distillate - Area	67	193	18	25	15
3.b. Distillate - Point					
4.a. Residual - Area	126	448	66	42	79
4.b. Residual - Point	124	272	557	328	116
5. Gas	31	46		1	4
6. Total - Industrial	513	1,004	641	675	1,286
D. Power Plant					
1. Bituminous		10,425			
2. Distillate					
3. Residual		2,313			
4. Gas					
5. Total - Power Plant	0	13,742	0	0	
E. Total - Stationary Fuel	1,038	16,598	1,157	2,705	2,854
II. Processes					
A. Area	0	0	0	0	
B. Point	0	0	0	0	
C. Total - Processes	0	0	0	0	
III. Solid Waste					
A. Incineration					
1. On Site					5
2. Municipal	15	48	5	1	
3. Total - Incineration	15	48	5	1	5
B. Open Burning	4	12	3	7	6
C. Total	19	60	8	8	11
IV. Transportation					
A. Gasoline Vehicles	2,456	11,308	2,822	6,207	4,694
B. Diesel	140	584	143	326	248
C. Aircraft					
D. Off Highway	127	135	17	110	93
E. Railroad					
F. Total - Transportation	2,723	12,027	2,982	6,643	5,035
V. Grand Total	3,780	28,695	4,147	9,356	7,900
A. Area Sources	3,656	14,346	3,590	8,678	7,037
B. Point Sources	124	14,339	557	678	853

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Air Pollution

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TABLE 8-8
EMISSION INVENTORY SUMMARY 1970
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (Cont.)

	Schenectady County	Schoharie County	Ulster County	Regional Total
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	161	21	98	998
2. Distillate	1278	156	850	9415
3. Residual	41		13	278
4. Gas	329		61	1607
5. Total - Residential	1809	177	1022	12,298
B. Commercial				
1. Anthracite - Area	16	12	54	328
2.a. Bituminous - Area				197
2.b. Bituminous - Point			34	839
3.a. Distillate - Area	232	23	86	2035
3.b. Distillate - Point				111
4.a. Residual - Area	362	49	316	2297
4.b. Residual - Point	29		123	910
5. Gas	39		11	281
6. Total - Commercial	678	84	624	6998
C. Industrial				
1.a. Anthracite - Area				7
1.b. Anthracite - Point				
2.a. Bituminous - Area			57	797
2.b. Bituminous - Point	1325			2412
3.a. Distillate - Area	178	8	49	1013
3.b. Distillate - Point				
4.a. Residual - Area	366	31	718	3092
4.b. Residual - Point	61		158	2635
5. Gas	41		6	443
6. Total - Industrial	1971	39	988	10,399
D. Power Plant				
1. Bituminous				14,870
2. Distillate	416			545
3. Residual				2935
4. Gas				129
5. Total - Power Plant	416			18,479
E. Total - Stationary Fuel	4874	300	2634	48,174
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site	34			62
2. Municipal		2		104
3. Total - Incineration	34	2		166
B. Open Burning	8	1	9	78
C. Total	42	3	9	244
IV. Transportation				
A. Gasoline Vehicles	7876	946	6793	83,207
B. Diesel	397	68	353	4096
C. Aircraft				108
D. Off Highway	25	112	93	1252
E. Railroad				550
F. Total - Transportation	8298	1166	7239	89,213
V. Grand Total				
A. Area Sources	13,214	1469	9882	137,631
B. Point Sources	11,383	1469	9567	112,245
	1831		315	25,386

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Air Pollution

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TABLE B-11
EMISSION INVENTORY SUMMARY 1975
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE

	Albany County	Columbia County	Dutchess County	Fulton County	Greene County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	78	17	37	17	9
2. Distillate	2250	268	1266	219	210
3. Residual		7	92	2	
4. Gas	437	27	81	64	2
5. Total - Residential	2765	319	1476	302	221
B. Commercial					
1. Anthracite - Area		5	11	11	8
2.a. Bituminous - Area	150				
2.b. Bituminous - Point			775		30
3.a. Distillate - Area	864	58	52	47	23
3.b. Distillate - Point					111
4.a. Residual - Area	569	64	96	96	111
4.b. Residual - Point	129	38	146		
5. Gas	106	8	10	9	1
6. Total - Commercial	1818	173	1090	163	274
C. Industrial					
1.a. Anthracite - Area		1	1		1
1.b. Anthracite - Point					
2.a. Bituminous - Area	34	5		76	
2.b. Bituminous - Point					
3.a. Distillate - Area	177	21	268	21	13
3.b. Distillate - Point					
4.a. Residual - Area	29	43	927	42	176
4.b. Residual - Point	473	108	415	34	
5. Gas	277	5	35	8	
6. Total - Industrial	990	183	1646	181	190
D. Power Plant					
1. Bituminous			50		79
2. Distillate					
3. Residual	6216				
4. Gas					
5. Total - Power Plant	6216		50		79
E. Total - Stationary Fuel	11789	675	4262	646	764
II. Processes					
A. Area					
B. Point					
C. Total - Processes					
III. Solid Waste					
A. Incineration					
1. On Site	23		33		
2. Municipal			33		
3. Total - Incineration	23		66		
B. Open Burning	5	1	5	2	1
C. Total	28	1	38	2	1
IV. Transportation					
A. Gasoline Vehicles	14540	5870	9516	1848	1548
B. Diesel	1453	249	957	192	163
C. Aircraft	130				
D. Off Highway	85	144	144	42	85
E. Railroad	550				
F. Total - Transportation	16763	6263	10617	2082	1796
V. Grand Total	28580	6943	14917	2730	2563
A. Area Sources	21762	6797	13531	2696	2373
B. Point Sources	6818	146	1386	34	190

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Air Pollution

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TABLE 8-11

EMISSION INVENTORY SUMMARY 1975

TONS/YEAR

HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (cont.)

	Montgomery County	Orange County	Putnam County	Rensselaer County	Saratoga County
I. Fuel Stationary Sources					
A. Residential Area					
1. Anthracite	30	56	7	46	50
2. Distillate	223	958	470	1247	1096
3. Residual	2	32		26	14
4. Gas	67	301	3	223	242
5. Total - Residential	322	1347	480	1542	1402
B. Commercial					
1. Anthracite - Area	11	43	11		24
2.a. Bituminous - Area				33	
2.b. Bituminous - Point					
3.a. Distillate - Area	45	295	21	145	116
3.b. Distillate - Point					
4.a. Residual - Area	94	165	86	154	148
4.b. Residual - Point		325		80	43
5. Gas	12	53	3	41	12
6. Total - Commercial	172	881	121	453	343
C. Industrial					
1.a. Anthracite - Area	2				
1.b. Anthracite - Point					
2.a. Bituminous - Area	163	30		6	144
2.b. Bituminous - Point				270	704
3.a. Distillate - Area	67	273	22	29	15
3.b. Distillate - Point					
4.a. Residual - Area	126	648	105	48	79
4.b. Residual - Point	124	272	557	328	116
5. Gas	31	66		1	4
6. Total - Industrial	513	1289	684	682	1062
D. Power Plant					
1. Bituminous					
2. Distillate					
3. Residual		5798			
4. Gas					
5. Total - Power Plant		5798			
E. Total - Stationary Fuel	1007	9315	1285	2677	2807
II. Processes					
A. Area					
B. Point					
C. Total - Processes					
III. Solid Waste					
A. Incineration					
1. On Site					
2. Municipal	15	48	5	1	5
3. Total - Incineration	15	48	5	1	5
B. Open Burning	2	6	2	3	3
C. Total	17	54	7	4	8
IV. Transportation					
A. Gasoline Vehicles	1842	10177	3780	4981	4809
B. Diesel	208	1041	379	518	503
C. Aircraft					
D. Off Highway	127	135	17	110	93
E. Railroad					
F. Total - Transportation	2177	11353	4178	5609	5405
V. Grand Total	3201	20722	5470	8290	8220
A. Area Sources	3077	14327	4913	7612	7357
B. Point Sources	124	6395	557	678	863

Exhibit "I." Page 2

Exhibit "I."

Air Pollution

B-157

TABLE A-11
EMISSION INVENTORY SUMMARY 1975
TONS/YEAR
HUDSON VALLEY AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (cont.)

	Schenectady County	Schoharie County	Ulster County	Regional Total
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	80	10	49	486
2. Distillate	1341	169	1046	10763
3. Residual	41		13	229
4. Gas	346		74	1867
5. Total - Residential	1808	179	1182	13345
B. Commercial				
1. Anthracite - Area	8	6	27	164
2.a. Bituminous - Area				183
2.b. Bituminous - Point			34	839
3.a. Distillate - Area	244	24	104	2038
3.b. Distillate - Point				111
4.a. Residual - Area	362	49	316	2310
4.b. Residual - Point	29		123	913
5. Gas	41		11	307
6. Total - Commercial	684	79	615	16866
C. Industrial				5
1.a. Anthracite - Area				
1.b. Anthracite - Point				
2.a. Bituminous - Area			32	490
2.b. Bituminous - Point	1325			2299
3.a. Distillate - Area	187	8	61	1162
3.b. Distillate - Point	416			416
4.a. Residual - Area	366	31	718	3338
4.b. Residual - Point	61		518	2646
5. Gas	43		7	477
6. Total - Industrial	2398	39	976	10833
D. Power Plant				
1. Bituminous				
2. Distillate				
3. Residual				
4. Gas				12143
5. Total - Power Plant				12143
E. Total - Stationary Fuel	4890	297	2773	43196
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site				23
2. Municipal	34	2		143
3. Total - Incineration	34	2		166
B. Open Burning	4	1	9	46
C. Total	38	3	9	210
IV. Transportation				
A. Gasoline Vehicles	6220	776	6058	71967
B. Diesel	621	110	524	6923
C. Aircraft				130
D. Off Highway	25	152	93	1252
E. Railroad				550
F. Total - Transportation	6866	1038	6675	80822
V. Grand Total	11794	1338	9457	124225
A. Area Sources	10379	1338	9142	105304
B. Point Sources	1415		315	18921

Exhibit "L", Page 3

Exhibit "I" -
Air Pollution

B-116

TABLE 8-8

EMISSION INVENTORY SUMMARY 1970

TONS/YEAR

SOUTHERN TIER EAST AIR QUALITY CONTROL REGION

NITROGEN DIOXIDE

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	396	79	94	107
2. Distillate	742	260	242	305
3. Residual	62			
4. Gas	591	29	22	2
5. Total - Residential	1791	368	358	414
B. Commercial				
1. Anthracite - Area	87	18	17	22
2.a. Bituminous - Area				
2.b. Bituminous - Point	279			
3.a. Distillate - Area	167	41	37	55
3.b. Distillate - Point				
4.a. Residual - Area	331	107	81	129
4.b. Residual - Point				
5. Gas	119	4	35	111
6. Total - Commercial	983	170	4	5
C. Industrial			174	322
1.a. Anthracite - Area	312			
1.b. Anthracite - Point				
2.a. Bituminous - Area	422		16	
2.b. Bituminous - Point	570			
3.a. Distillate - Area	183	65	59	19
3.b. Distillate - Point	31			
4.a. Residual - Area	354	246	219	70
4.b. Residual - Point	375	110	52	
5. Gas	103	9	4	1
6. Total - Industrial	2350	430	350	90
D. Power Plant				
1. Bituminous	3767	2034		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	3767	2034		
E. Total - Stationary Fuel	8891	3002	882	826
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site	2			
2. Municipal	2			
3. Total - Incineration	9			
B. Open Burning	11	3	3	4
C. Total		3	3	4
IV. Transportation				
A. Gasoline Vehicles	10,736	2906	1755	2071
B. Diesel	557	128	134	142
C. Aircraft	28			
D. Off Highway	144	237	338	279
E. Railroad				
F. Total - Transportation	11,465	3271	2227	2492
V. Grand Total	20,367	6276	3112	3322
A. Area Sources	15,345	4132	3025	3211
B. Point Sources	5,022	2144	87	111

Exhibit "M", Page 1

Exhibit "I" -
Air Pollution

B-117

TABLE B-8
EMISSION INVENTORY SUMMARY, 1970
TONS/YEAR
SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (Cont.)

	Sullivan County	Tioga County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	54	80	810
2. Distillate	385	179	2113
3. Residual		2	64
4. Gas		41	685
5. Total - Residential	439	302	3672
B. Commercial			
1. Anthracite - Area	10	18	172
2.a. Bituminous - Area			
2.b. Bituminous - Point			279
3.a. Distillate - Area	103	34	437
3.b. Distillate - Point			
4.a. Residual - Area	296	66	1010
4.b. Residual - Point			146
5. Gas		5	137
6. Total - Commercial	409	123	2181
C. Industrial			
1.a. Anthracite - Area			312
1.b. Anthracite - Point			
2.a. Bituminous - Area		19	457
2.b. Bituminous - Point			570
3.a. Distillate - Area	17	65	408
3.b. Distillate - Point			31
4.a. Residual - Area	63	250	1202
4.b. Residual - Point			537
5. Gas		10	127
6. Total - Industrial	80	344	3644
D. Power Plant			
1. Bituminous			5801
2. Distillate			
3. Residual			
4. Gas			
5. Total - Power Plant			5801
E. Total - Stationary Fuel	928	772	15,298
II. Processes			
A. Area			
B. Point			
C. Total - Processes			
III. Solid Waste			
A. Incineration			
1. On Site			7
2. Municipal	5		7
3. Total - Incineration	5		7
B. Open Burning	3	3	25
C. Total	8	3	32
IV. Transportation			
A. Gasoline Vehicles	3069	1804	22,341
B. Diesel	164	108	1,233
C. Aircraft			28
D. Off Highway	76	127	1,201
E. Railroad			
F. Total - Transportation	3309	2039	24,803
V. Grand Total	4245	2811	40,133
A. Area Sources	4245	2811	32,769
B. Point Sources			7,364

Exhibit "M", Page 2

Exhibit "I" -
Air Pollution

B-158

TABLE 8-11

EMISSION INVENTORY SUMMARY 1975
 TONS/YEAR
 SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
 NITROGEN DIOXIDE

	Broome County	Chenango County	Delaware County	Otsego County
I. Fuel Stationary Sources				
A. Residential Area				
1. Anthracite	198	40	47	54
2. Distillate	816	312	269	366
3. Residual	62			
4. Gas	650	35	24	2
5. Total - Residential	1726	387	340	422
B. Commercial				
1. Anthracite - Area	43	9	8	11
2.a.Bituminous - Area				
2.b.Bituminous - Point	279			
3.a.Distillate - Area	184	49	41	66
3.b.Distillate - Point				
4.a.Residual - Area	331	107	81	129
4.b.Residual - Point			35	111
5. Gas	131	5	4	6
6. Total - Commercial	968	170	169	323
C. Industrial				
1.a.Anthracite - Area	156			
1.b.Anthracite - Point				
2.a.Bituminous - Area	283		11	
2.b.Bituminous - Point	570			
3.a.Distillate - Area	201	78	65	23
3.b.Distillate - Point	31			
4.a.Residual - Area	354	246	219	70
4.b.Residual - Point	375	110	52	
5. Gas	103	9	4	1
6. Total - Industrial	2073	443	351	94
D. Power Plant				
1. Bituminous	3767	2034		
2. Distillate				
3. Residual				
4. Gas				
5. Total - Power Plant	3767	2034		
E. Total - Stationary Fuel				
II. Processes				
A. Area				
B. Point				
C. Total - Processes				
III. Solid Waste				
A. Incineration				
1. On Site				
2. Municipal	2			
3. Total - Incineration	2			
B. Open Burning	5	2	2	2
C. Total	9	2	2	2
IV. Transportation				
A. Gasoline Vehicles	8398	2336	1532	1681
B. Diesel	863	204	204	228
C. Aircraft	34			
D. Off Highway	144	237	338	279
E. Railroad				
F. Total - Transportation	9439	2777	2074	2188
V. Grand Total				
A. Area Sources	17,982	5813	2936	3029
B. Point Sources	12,960	3669	2849	2918
	5,022	2144	87	111

B-159

TABLE B-11

EMISSION INVENTORY SUMMARY 1975

TONS/YEAR

SOUTHERN TIER EAST AIR QUALITY CONTROL REGION
NITROGEN DIOXIDE (Cont.)

	Sullivan County	Tioga County	Regional Total
I. Fuel Stationary Sources			
A. Residential Area			
1. Anthracite	27	40	406
2. Distillate	400	215	2378
3. Residual		2	64
4. Gas		49	760
5. Total - Residential	427	306	3608
B. Commercial			
1. Anthracite - Area	5	9	85
2.a. Bituminous - Area			
2.b. Bituminous - Point			279
3.a. Distillate - Area	107	41	489
3.b. Distillate - Point			
4.a. Residual - Area	296	66	1010
4.b. Residual - Point			146
5. Gas		6	152
6. Total - Commercial	408	122	2160
C. Industrial			
1.a. Anthracite - Area			156
1.b. Anthracite - Point			
2.a. Bituminous - Area		13	307
2.b. Bituminous - Point			570
3.a. Distillate - Area	18	78	463
3.b. Distillate - Point			31
4.a. Residual - Area	63	250	1202
4.b. Residual - Point			537
5. Gas		12	129
6. Total - Industrial	81	353	3395
D. Power Plant			
1. Bituminous			
2. Distillate			5801
3. Residual			
4. Gas			
5. Total - Power Plant			
E. Total - Stationary Fuel			5801
II. Processes			
A. Area		4	4
B. Point			
C. Total - Processes		4	4
III. Solid Waste			
A. Incineration			
1. On Site			
2. Municipal	5		7
3. Total - Incineration	5		7
B. Open Burning	3	2	16
C. Total	13	2	30
IV. Transportation			
A. Gasoline Vehicles	2672	1664	18,283
B. Diesel	283	197	1,979
C. Aircraft			34
D. Off Highway	76	127	1,201
E. Railroad			
F. Total - Transportation	3031	1988	21,497
V. Grand Total	3960	2775	36,495
A. Area Sources	3960	2775	29,111
B. Point Sources			7,364

Exhibit "N", Page 2

Exhibit "N" -
Air Pollution

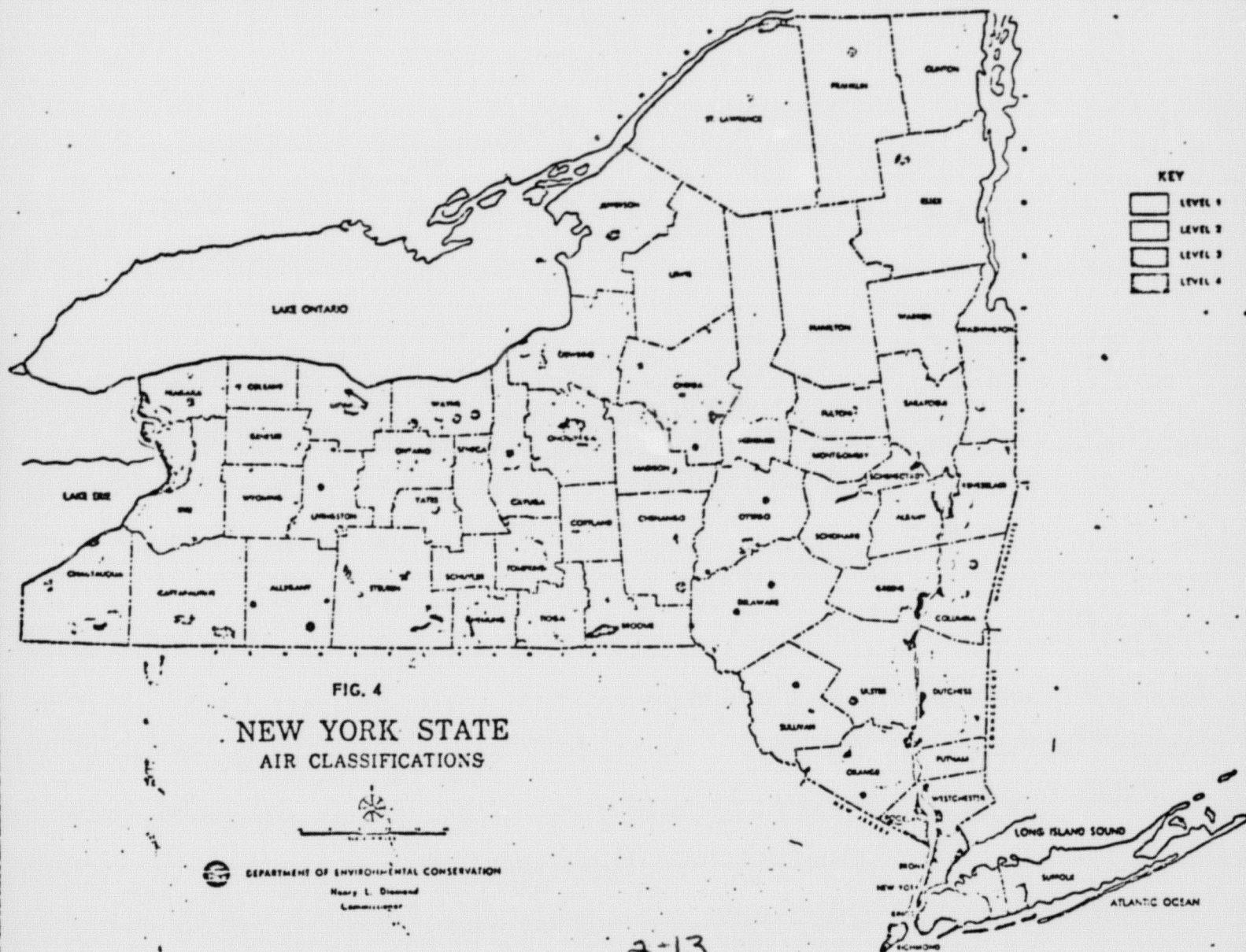
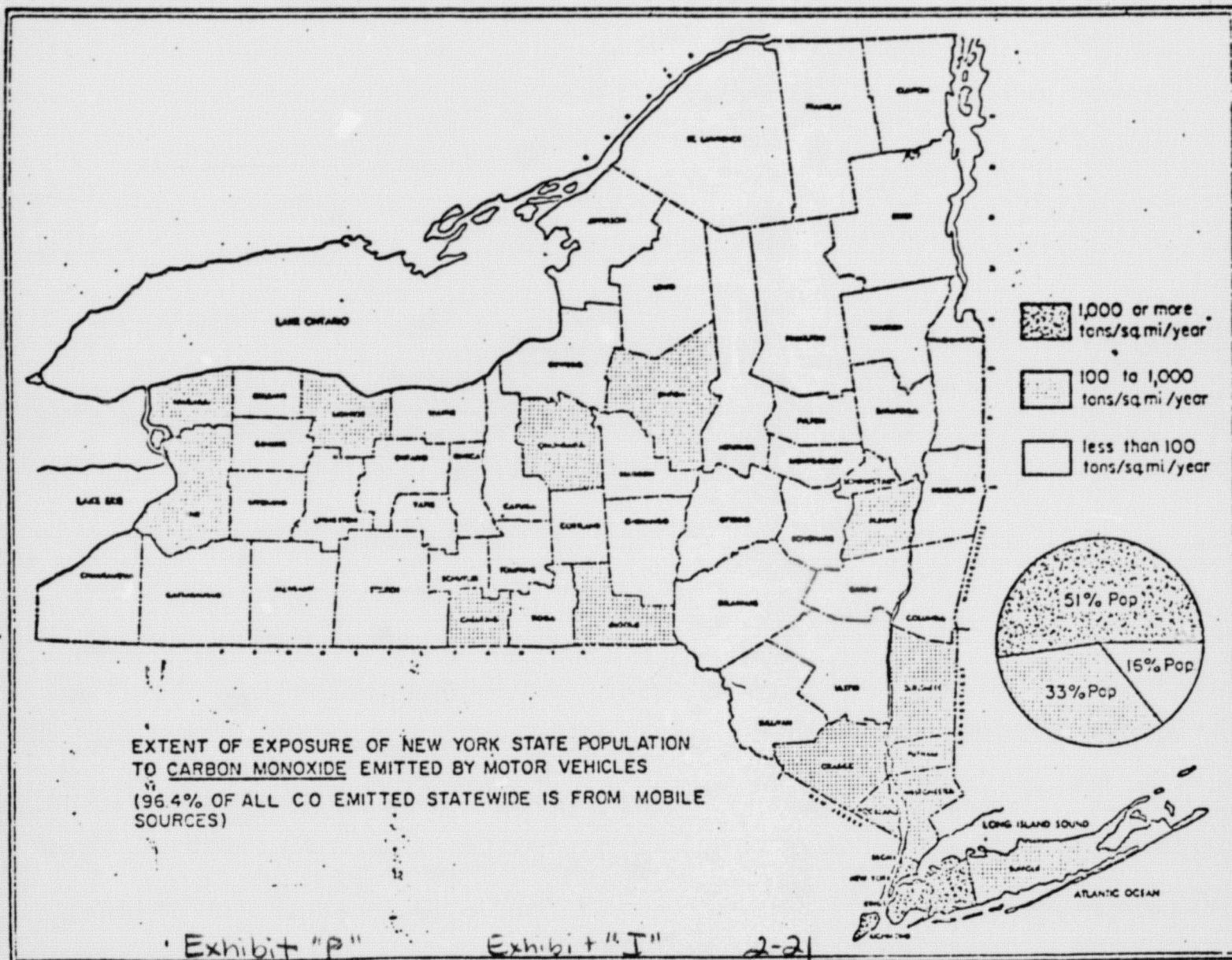


Exhibit "O"

Exhibit I - Air Pollution

A-140





Air Pollution

A-142

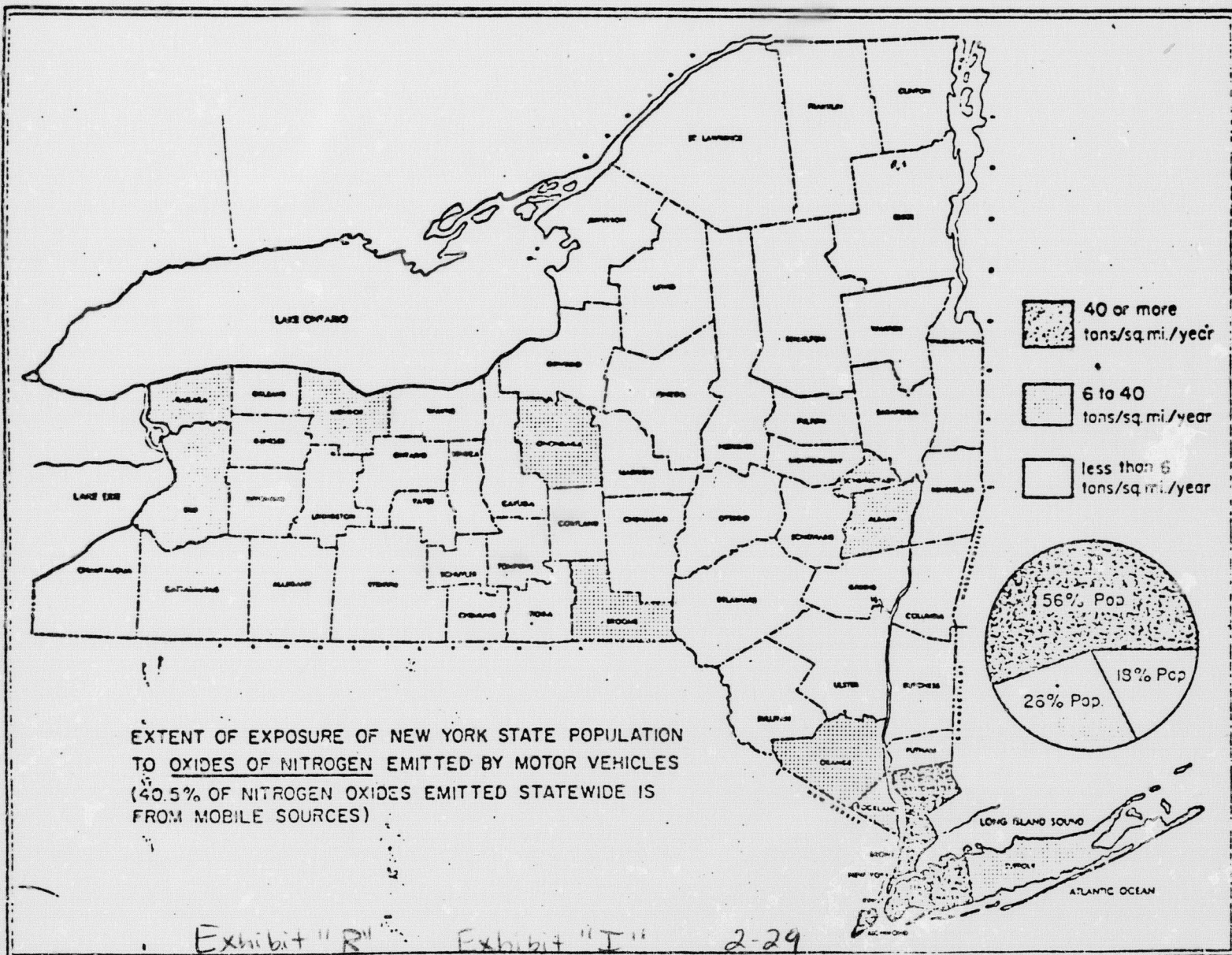


Exhibit "R"

Exhibit "I"

2-29

Air Pollution

A-143

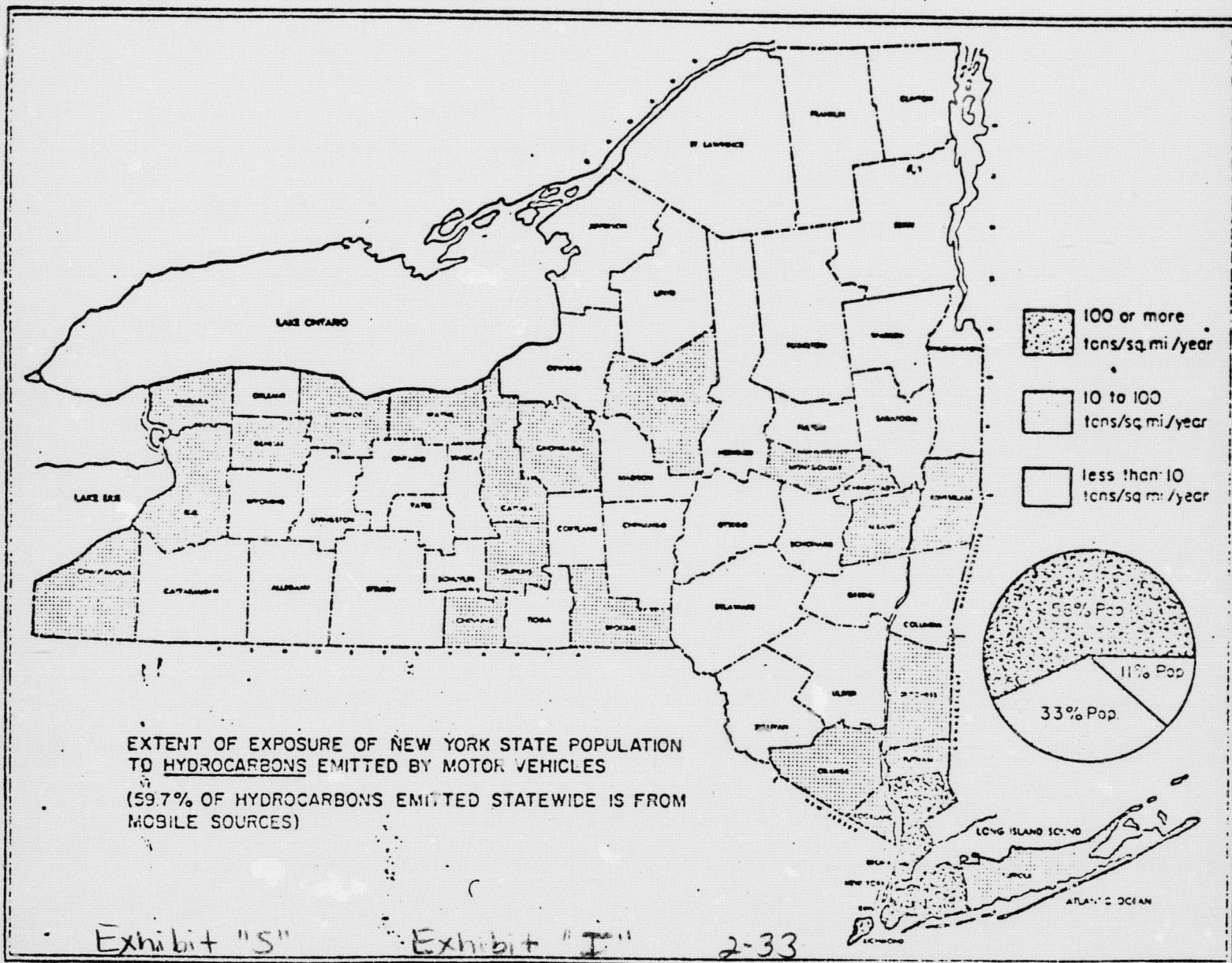


Exhibit "S"

Exhibit "I"

2-33

Air Pollution

A-1424

A345

Mr. L. E. Jordan, P.E.
 District Engineer (3-3)
 Department of Transportation
 Commonwealth of Pennsylvania
 1713-41 Lehigh Street
 Allentown, Pennsylvania 18105

SEARCHED	INDEXED
SERIALIZED	FILED
AUG 20 1971	
FBI - ALLANTOWN	

Dear Mr. Jordan:

Your April 27, 1971 request to the Director, Department of Health, Education, and Welfare, New York, was referred to our Philadelphia Regional Office which conducted the review of the draft environmental impact statement for "A Portion of L.R. 1045 Section A07 and L.R. 1045 Section A08, Northampton County. The review was made by all program entities in EPA which have jurisdiction by law on special expertise in environmental matters relating to highway construction. The comments below are submitted for your consideration and guidance in the preparation of the final environmental statement and in the conduct of the project.

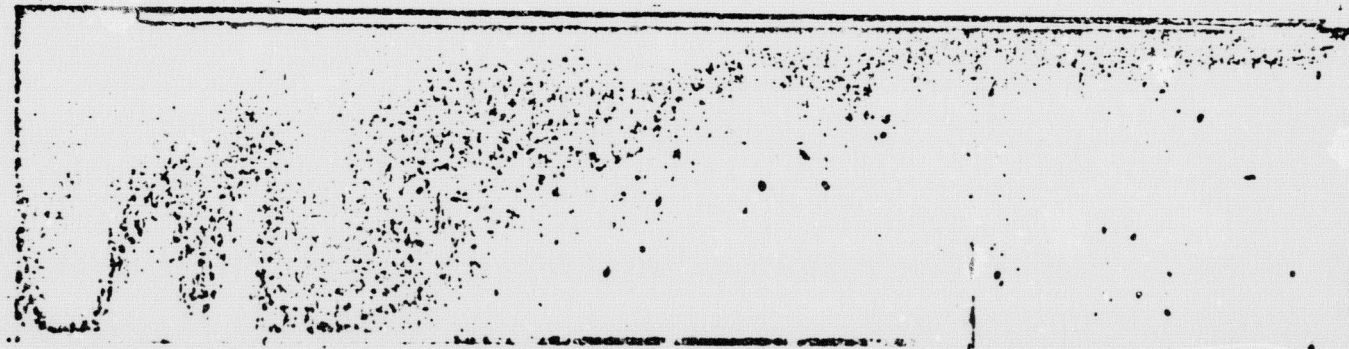
Air Pollution

The draft statement contends that "I-78 will have a negative effect on air pollution in the area." This contention is supported by the statement that 40,000 vehicles per day (VPD) will be diverted off Route 22 to I-78 by 1990. In addition, "tighter Federal standards by 1974 on automobile manufacturers will further improve air quality."

It appears to us that the 40,000 VPD diversion from Route 22 will constitute only a portion of the traffic flow on I-78 by 1990. To permit a determination of the effect on air quality the following factors should be considered in the final impact statement: total vehicular flow per day, mix of vehicles (trucks, buses, passenger automobiles, etc.) meteorological data, design features which may require acceleration or deceleration (for through as well as for exit and entrance traffic) and predicted land uses for lands adjoining the roadway.

RECEIVED
 M.E.B.
 AUG 20 1971
 DISTRICT
 ALLANTOWN

EXHIBIT "B"



As indicated in the draft statement, the highway will stimulate commercial, industrial, and housing development. These are considered secondary impacts of the highway project and should be considered when assessing impacts on air and water quality.

In view of the possible vehicular flows above those estimated in the statement and the apparent failure to fully consider secondary impacts, we cannot agree with the conclusion contained in the statement that "I-78 will have a negative effect on air pollution in the area."

This highway project is located in the Northeastern-Upper Delaware Valley Interstate Air Quality Control Region. Since this project may influence the Regional Implementation Plan to achieve National Air Quality Standards, this possible effect should be fully discussed in the final statement.

Ambient Noise Level

The statement contends that the proposed highway traverses a low density residential and farming area, and therefore, will not lead to a noticeable change in ambient noise level for any substantial number of people. This contention does not appear to be consistent with the expected changes in land use through commercial, industrial, and residential growth. Should the land use change significantly to more intensive use the ambient noise levels might become a problem affecting substantial numbers of people. We suggest that noise be re-evaluated with full consideration of project land use. The conclusions of such an evaluation and the basis for them should be included in the final environmental statement.

Short-Term Environmental Effects

The draft statement does not adequately discuss short-term adverse effects of the project. These effects include fugitive dust and smoke from construction operations and the increase in water turbidity created by disturbance of the Delaware River bottom and by runoff from denuded lands. Measures to control these adverse impacts should be described in the final statement.

The statement's treatment of long-term effects on water quality, water supply and water table depression seems to be sufficient and accurate. These impacts, in our judgment, are minimal.

We appreciate the opportunity to review and comment on the draft environmental statement for L.R. Route 1045 (Sections A07 and A08) - I-78. If we can further assist you on environmental control matters please feel free to contact Mr. Lloyd Gebhard, our Acting Regional Administrator in Philadelphia.

Sincerely yours,

George Marienthal

George Marienthal
Acting Director
Office of Federal Activities

P E T I T I O N

to

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Re: Route I-684
Westchester County, New York

The undersigned petitioners, who include municipalities, national and local associations, and individual residents and landowners of the affected area, request that the Department of Environmental Conservation hold a hearing and take evidence on the environmental impact of Route I-684 and the operation of motor vehicles along said Route, for the following specific purposes:

(a) To evaluate the environmental impact of Route I-684 and its related traffic operations, including the impact of excessive noise resulting from such traffic operations.

(b) To determine whether the policies of the State regarding environmental protection, or any other laws, rules or regulations, are presently being violated by traffic operations along Route I-684.

(c) To determine what regulations should be adopted and what further actions should be taken by the Department to eliminate or reduce the adverse environmental

impact of traffic operations along Route I-684, in accordance with the constitutional and statutory policies and purposes set forth in Article XIV, Section 4, of the New York State Constitution and Sections 10, 14 and 15 of the Environmental Conservation Law.

(d). To determine what proposals or recommendations should be made by the Department to other Federal and State agencies and departments (including the State Department of Transportation) to eliminate or reduce the adverse environmental impact of the aforesaid traffic operations.

(e) Generally to assist the Department in developing appropriate noise regulations and standards for major highways within the State.

Since November 1970, when the section of Route I-684 between Armonk and Katonah was opened to traffic, petitioners have been subjected to the constant rush of trucks and cars, to grinding gears, inadequately-muffled engines and the roar of cleated treads. The consequences have been a continuous din, day and night, rolling across the Westchester countryside and intruding upon the lives of countless citizens. The rural environment has been transformed, by the incidents of constant noise, into an industrial earsore, and the tranquility of the countryside has been overborne. In short, the impact of Route I-684, and the trucks and cars which ply its lanes, has been to totally degrade the surrounding environment. Petitioners submit that this degradation is inconsistent with the constitutional and statutory policies of the State regarding environmental protection, and that in light of these inconsistencies and the further facts set forth below and in the

affidavits submitted herewith, the Department should hold an impact hearing in respect of this matter. There is ample authority for the Department to do so under the Environmental Conservation Law of 1970 [Laws of 1970, Chapter 140], all as more fully described below.

• Description of I-684 and the
Surrounding Environment

I-684 is a six lane, divided, concrete expressway supposedly built to Interstate standards. Originally designed as an essential link in the highway system between New York and Montreal, it now provides, at best, a circuitous alternative route between New York City and the Thruway Interchange near Newburgh. Extending from the Cross Westchester Expressway on the south, I-684 runs northwards towards Armonk and thence through the rural countryside of northern Westchester County (including the areas of North Castle, Bedford, Mt. Kisco and Katonah) before intersecting with Route I-94 (near Brewster in Putnam County), where it terminates.

I-684 is a study in bad planning and environmental indignities along its entire 27-mile length. However, its impact is particularly severe in the 10-mile segment between Armonk and Katonah. Cutting across countryside that should, in enlightened retrospect, clearly have been preserved, the road has brought to this area all the accompaniments of high-speed cars and laboring trucks, including, above everything else, the continuous imposition of unwarranted noise.

The area deserved and deserves better. Lying only 80 minutes from the City, it has, but for the road, been preserved nonetheless. Its rolling hills and fields bring with them an extraordinary natural beauty that is unique within the metropolitan area; and where the road does not intrude its din, there is a rural tranquility which offers respite from the City-- not only for those who live in the area, but for all citizens of the State who may wander its backroads. Furthermore, the whole direction of planning has been to preserve this special environment and avoid the disease of urban sprawl that is so rife around New York.

Now, however, the intrusion of I-684 and the clatter of its traffic have cut through the countryside and transformed it into a corridor of excessive noise. It is the impact of this intrusion that petitioners ask the Department to confront.

The Impact of Excessive Noise

As noted above, the whole direction of planning in the area between Armonk and Katonah has been to preserve the special qualities of the countryside which distinguish it from the maze of urban sprawl moving outwards from New York; and this, indeed, had served as the incentive for those who settled here. In many cases commuters, the 80-minute drive was nonetheless considered a price worth paying for the benefits of the country. Similarly, while the costs of acquiring homes (today ranging upward from \$100,000) imposed severe financial burdens on many who settled in the area, these burdens were also accepted in return for the beauty and tranquility of the countryside.

It was hardly unexpected, then, that when I-684 was proposed, it generated fierce opposition from residents of the area. The incongruous manner of planning, the intrusion upon wildlife preserves and the general impact of a large-scale highway on the surrounding countryside-- all of these were raised and, indeed, carried to litigation. See Road Review League v. Boyd, 270 F. Supp. 650 (S.D.N.Y. 1967). The State's Superintendent of Public Works and Commissioner of Conservation both joined in expressing their misgivings, as did Stewart Udall, then Secretary of the Interior. Yet for all this, Federal Highway Officials insisted on the present route--and the road was ultimately built.

The consequences of the decision are no longer speculative. The chickens have come home to roost--and in a fashion that was only too well predicted. Route I-684 is a reality, weaving its ribbons of concrete across the rural countryside; and with it has come the interminable noise of trucks and cars, day and night, rushing obliviously by.

The impact of the environmental has exceeded all expectations. The noise is not audible, as had originally been predicted, only to nearby homeowners. For many residents two miles or more distant from the Route, traffic seems to pass in their backyards; and for those closer, the noise levels are often so extreme as to rattle foundations. All and all, petitioners believe that as many as 300 homes are directly affected by excessive noise from the highway; and when feeder roads are included, the numbers grow proportionately.

Furthermore, the sound levels are not mere irritants. Rolling across the countryside, they are an intrusion upon life itself. Conversation is often impossible; sleep is disturbed; and all semblance of tranquility is lost. Gears shift on back porches, engines roll through bedrooms, tires whine along halls. In short, I-684 has intruded upon the residents of the area an unconscionable environmental burden. It has taken their homes, and the countryside alike and thrust upon them the unmitigated clamor or urban traffic flow. It has, in sum, denied them the value of their homes, the substantial investments in time and money that they have incurred to live in the country and, above everything else, the environmental protection to which they are entitled under the Constitution and Statutes of this State.

(Further facts in support of the petition, including descriptions of the damage that has been done, are set forth in the affidavits and accompanying statements submitted herewith).

Authority and Duty of the
of the Department to Act

Petitioners recognize that it is probably impossible in the foreseeable future to terminate traffic operations along I-684. However, this does not mean that nothing can be done to mitigate (if not eliminate) the adverse environmental impact of the road. On the contrary, there is much that can be done through regulation and other remedial action, including, by way of example, adjustment of speed limits, the regulation of permissible engine noise, and the possible use of baffles.

Petitioners do not, at this point, suggest the precise remedial actions that should be taken. (These should rather await the development of evidence upon hearing.) Petitioners do submit, however, that as a matter of first instance, the Department has both the authority and the obligation to conduct a hearing on the environmental impact of Route I-684 and its related traffic operations.

The Department's authority to hold such a hearing is clear under Section 15(8) of the Environmental Conservation Law which empowers the Department to conduct investigations and hold hearings to assist in carrying out the environmental policies of the State; and those policies manifestly include protection against excessive noise. Thus, Section 4 of Article XIV of the State Constitution expressly provides that:

"The policy of the state shall be to conserve and protect its natural resources and scenic beauty....The legislature, in implementing this policy, shall include adequate provision for abatement of air and water pollution and of excessive and unnecessary noise....." (emphasis added).

In furtherance of the Constitutional policy, the Legislature enacted the Environmental Conservation Law and, in this connection, expressly vested in the Commissioner the responsibility to:

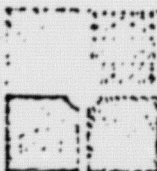
"Provide for the prevention and abatement of all water, land and air pollution, including but not limited to that related to....noise..." (Section 14(9); (emphasis added)).

In addition, under Section 77 of the Environmental Conservation Law, there were transferred to the Department all of the State's responsibilities for the control of air contaminants; and under the 1971 amendment to the Public Health Law, "air contaminant" was expressly broadened to include "noise".

In the light of the express Constitutional and Statutory mandates summarized above, and the policies of the State reflected thereby, petitioner respectfully submit that the Department must and should hold an environmental impact hearing in this matter. Petitioners believe that such a hearing is essential to adequately protect the environment through which I-684 passes. But beyond this, petitioners believe that such a hearing at this point will assist the Department in meeting its responsibilities in the area of noise pollution and in developing meaningful criteria for dealing with highway noise throughout the State.

WHEREFORE, petitioners respectfully request that this petition be granted and an environmental impact hearing be called for the purposes set forth at the outset of the petition.

STATE OF NEW YORK • EXECUTIVE DEPARTMENT

OFFICE OF PLANNING COORDINATION
ROOM 304, STATE TOWER BUILDING
50 WARREN ST., SYRACUSE, N.Y. 13202ROBERT C. HANSEN
DISTRICT DIRECTOR

July 15, 1970

Mr. Peter A. Donovan
State Farm Road
Guilderland, New York 12084

Dear Mr. Donovan:

Thank you for your recent letter regarding I-88. As you may know, the proposed I-88 involves both the Capital District Office and the Central New York District Office of OPC, and I assume you have already discussed the proposal with Mr. James VanDervort in Albany.

At the present time there are no published economic impact studies available regarding I-88. Economic Consultant's Organization, Inc. of Syracuse is, however, working on a limited assessment of I-88's impact on the Upper Hudson region at this time as part of a larger regional economic base analysis. That firm is currently involved in report revisions in anticipation of final reports being transmitted to our Capital District Office shortly. This limited impact analysis is intended primarily for staff use and accordingly will be made available to the Department of Transportation and their consultants.

With regard to the Southern Tier East Region, I suggest you take a look at somewhat dated, but still relevant, reports, "Studies in Regional Development: Population, Activities, and Incomes in Chenango, Delaware, and Otsego Counties" by Barclay G. Jones and Jon T. Lang and "Studies in Regional Development: A Factor Analysis Approach to Sub-Regional Definition in Chenango, Delaware and Otsego Counties" by Barclay G. Jones and William W. Goldsmith, New York State College of Agriculture at Cornell University.

Generally, Economic Consultants Organization, as a result of their investigations, have indicated that I-88 will probably have only modest influence on development patterns in the corridor through which it passes. It is the consultant's feeling that other existing development obstacles -- which prevail in much of the corridor area -- will not be offset to any significant degree by the improved accessibility provided by the new highway.

Exhibit "IV" -
Alternatives

Mr. Peter A. Donovan
July 15, 1970
Page 2

This, however, should not be interpreted to mean that there are no other justifications for I-88. Some of these are set forth in the state legislation authorizing the Susquehanna Expressway (Anderson Bill). In addition, other advantages which come to mind might be:

1. A direct link between Binghamton and the Capital will be created, which will also service the several communities between Albany and Binghamton with a much more efficient type of transportation than is now available. This improved accessibility may somewhat assist the growth centers of Oneonta, Sidney and Cobleskill.
2. The "backside" of the Catskills will become much more accessible, thereby accelerating the pace of development of recreation and tourist activities.
3. Commuting patterns may be substantially altered. Schoharie County will be placed within an easier commuting range of Albany and Schenectady.
4. Similarly, the "uplands" counties of Otsego, Delaware and Chenango will be brought closer (timewise) to Binghamton.

In my own opinion, I believe that I-88 would go a long way toward making New York State a more cohesive unit, to make various parts of the State more accessible to other parts of the State and other states and break down the sense of isolation which causes the out-migration of many young people from the less populated areas of the state.

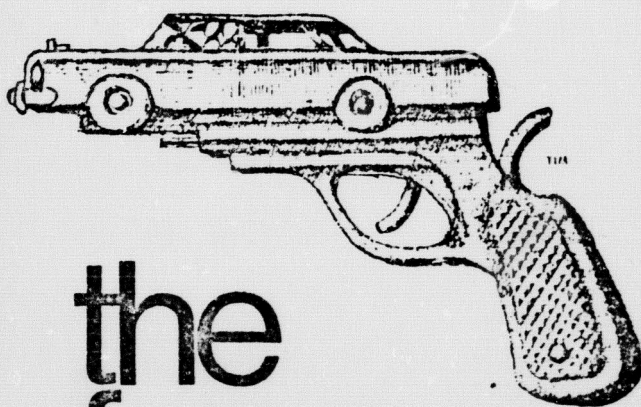
We in OPC are pleased with your interest in the state's development as it is sometimes difficult to obtain the layman citizen's viewpoint on these matters. There is most certainly room for disagreement regarding the development of the state if that disagreement results in an improved solution.

Sincerely,

Robert C. Hansen

Robert C. Hansen
District Director

RCH/gs



the freeway failure

by
GEORGE W. BROWN, Ph.D.
Transportation Consultant

Presented to

**THE THIRD NATIONAL
CONFERENCE ON THE
TRANSPORTATION CRISIS**

**Washington, D.C.
June 10, 1972**

A
158

● HOW LONG WILL THE GAS PUMP OPERATE?

We are beginning to hear talk about an "energy crisis" in terms of electrical generating capacity, but what about the consumption of non-renewable energy resources by our transportation system? The evidence is unequivocal. We cannot continue to squander fossil fuel to run our inefficient motor vehicle transportation system. The United States required 29.9% of the World's production of crude oil during 1969 to support our motor vehicle population. This consumption was accomplished by a country representing only 5.7% of the World's population. In energy terms, we expended 16 times as much energy for feeding motor vehicles as was needed for feeding our entire human population. It is impossible to continue down this path. Each freeway project produces a major increment in fuel demand. Four times as much fuel is required per passenger mile to move people in private automobiles as is required for half empty 40 passenger buses. Ten times as many people per unit can be transported by bus in a given time, and rail passenger transport is even more efficient. 347% more fuel is required to move a ton of goods in heavy trucks than is required to move the same goods by rail. Freeways provide an enormous subsidy to encourage truck shipments and discourage the inherently more efficient rail shipments. The squandering of fossil fuels caused the Director of the U.S. Geological Survey to state:

"in the United States, we have used more mineral fuels during the last 30 years than all the people of the world used previously. This enormous consumption will have to be doubled just to meet the needs of the people now living in the United States through the remainder of their lifetimes."

● MUST WE KEEP ON A' TRUCKING?

The evidence against further freeway construction and proliferation of motor vehicle transportation has become so overwhelming that even the National Academy of Engineering, a traditionally pro-highway group, issued a report to the Department of Transportation on April 30, 1972, criticizing further urban freeway construction.

Why is it that freeway and interstate building programs continue unabated? The answer is money. The public subsidy poured into the system is so great and special interest profits so high that the juggernaut is very difficult to stop. Support for the system also comes from the highest levels of Government. When President Nixon was troubled by the economic depression, one of his solutions was to encourage expansion of new car purchases with still another subsidy for the auto industry.

● WHO ARE THE FREEWAY PUSHERS?

One example of special interest money which is illuminating is the record of trucking subsidy obtained from

Federal Bureau of Public Roads and Commerce Department reports. During the years of 1968 and 1969, 12.3 billion dollars per year were collected in road use taxes and fees. Of this amount, 11.7 billion dollars were paid by automobile, bus, and small truck operators. Six hundred and eleven million dollars were contributed by interstate trucking operations. According to a study sponsored by the U.S. Bureau of Public Roads, one 72,000 lb. interstate truck causes as much damage to high grade pavements as 6000 passenger automobiles. Therefore, adjusting for deterioration of pavements per mile traveled, the tax structure should have been inverted, with the heavy interstate trucks contributing 12.1 billion dollars in road use taxes, and the other highway users 211 million dollars. *The motorist is subsidizing heavy truck interstate freight shipments to the tune of 4.6¢ per ton per mile.* If rail freight shipments had been subsidized at the same rate as truck freight during 1969, we would have paid the railroads a 35.6 billion dollar subsidy!

● HOW CAN WE STOP THE JUGGERNAUT?

We must stop the freeway building juggernaut before it destroys all of us. Transportation must be made an issue in all political campaigns ranging from city council elections to the presidential campaign. I believe the public is aroused, but organization, money, and publicity are sparse. Somewhere in the near future a well organized citizen's group opposing a particular freeway project must make an issue of the concept of eminent domain. The laws of eminent domain state that private property can be confiscated for the public good. The highwayman claims this is what he is doing when he confiscates land. The evidence to the contrary is now so great that I believe a successful legal challenge can be made. Success would require the highwaymen to prove the public good before undertaking any new project anywhere in the country. This should bring about a reordering of transportation policy.

**GET
IT
RIGHT**

For additional copies or more information, please write:

**NATIONAL COALITION ON
THE TRANSPORTATION CRISIS**

Brookland P.O. Box 4529
Washington, D.C. 20017

THE FREEWAY FAILURE

OUR TRANSPORTATION SYSTEM is in utter chaos. The decade of the 60's provided the final experimental proof that the attempt to move all people and goods in the U.S. in private automobiles, trucks or airplanes is doomed to failure. The only question remaining is whether we create an orderly change to a system compatible with survival or continue on our present course until there is a catastrophic breakdown of transportation.

During this decade we witnessed a frenzy of road building activity, primarily concentrated on building interstate and urban freeways. Concomitant with this effort was the development of super jet airplanes and the massive airports necessary to accommodate them. The results have been tragic. There has been a 47% increase in traffic deaths although the population increase was 11.7%. Thus, on a national scale, traffic fatalities increased four times as rapidly as the human population. When you examine the gruesome statistics in greater detail, as I have in Iowa, the situation is even worse. In Iowa, with a static population base, the death rate reflected the national average increase of 47%, but the injury rate increased 75% during the decade. In a very real sense this explosive increase in traffic injuries is a greater burden to society than traffic deaths.

● ARE SUPER HIGHWAYS SUPER SAFE?

The claim by the traffic establishment that the new super highways are safer roads cannot stand careful scrutiny. Initially, it seems reasonable that a divided traffic facility without grade crossings should be safe. It would be true if the traffic count were kept low and heavy freight traffic was prohibited. However, this is not the case in the horror chamber of the

The author has a BA degree in General Science, a MS degree in Metallurgy and Chemistry, and a Ph.D. degree in Physiology. He has conducted research analyzing vehicle, roadway, and driver factors involved in the production of motor vehicle accidents. He taught courses in Accident Analysis, Traffic Safety, and Motor Vehicle Safety Design in the Engineering and Law Colleges of the University of Iowa. He was also a guest lecturer for Transportation Systems Analysis. At present the author is self employed as a Transportation Consultant.

All data cited in this paper is available from public records of Governmental Agencies, the National Safety Council, the Traffic Engineering Handbook and the American Association for the Advancement of Science.

American motor vehicle transportation system. Highways built to freeway standards subsidize heavy truck movement and attract automobile traffic. Almost as soon as a new segment of freeway is opened it becomes overcrowded and accidents escalate. By 1968, the casualty rate (injuries and deaths) on Iowa's system of Interstates had reached the level of 166 per hundred miles per year. The primary road system had a rate of 95 per hundred miles per year and the low traffic volume secondary roads had a casualty rate of 8 per hundred miles. Thus, on a time basis, exposure to Interstate traffic conditions in Iowa was 21 times as hazardous as exposure to secondary road traffic.

High traffic densities, high speeds and serious mismatch of vehicles produced when high speed heavy truck usage is encouraged, produce skyrocketing casualty rates. In Michigan, where Interstate mileage available for use was created at an earlier date, the casualty rate on Interstate facilities reached a level of 934 per hundred miles as early as 1967. Urban freeways are the most dangerous transportation facility ever devised. During 1967, there were 28 people killed and 1,615 injured for every 100 miles of urban freeway available for use within the State of Michigan.

● HOW FREE ARE FREEWAYS?

The argument is often advanced that people are expendable as long as we produce a transportation system that moves people and goods in an efficient manner for the survivors. Thus, freeways are necessary. This argument has been proven to be without foundation. The street and highway system we have been trying to create devours land, resources, and atmosphere at a rate that is impossible to sustain. Concomitantly we are degrading all essential transportation functions, including that portion of the transport system where the motor vehicle is important, and spending billions of dollars on the failing system.

Opponents of Freeways have often raised the spectre of the United States being paved over and the proponents produce figures indicating the small percentage of the total land area covered by pavement. Actually, the detrimental effects of Freeways extend far beyond the boundaries of the pavements. A four lane road built to freeway standards requires a 300 ft. right-of-way. Approximately every four miles of such a highway will require an 80 acre interchange. Therefore, every hundred miles of such a facility will take 5,640 acres out of the property tax base and place it on the highway welfare rolls. The initial cost of this transfer is averaging 2 million dollars per linear mile of highway construction in rural areas, and up to 20 million dollars per mile in Urban areas. The welfare cost for pavement replacement alone is averaging \$20,000 dollars per mile per year within the State of Iowa. This does not include the cost of traffic operations, police patrolling, signing, snow removal, or roadside maintenance.

● WANT A DRINK OF WATER?

Unfortunately, the detrimental effects of freeways do not stop at the boundaries of the right-of-way. The drainage water is carefully discharged outside of the right-of-way to eventually be deposited in the soil or ground water tables. It is very illuminating to observe the quality of this water as it emerges from the drainage structures. Recently, large elements of the ground water tables in Massachusetts have been found contaminated from road salt run-off. The spreading of a ton of salt per mile of freeway whenever icing conditions exist is found to exacerbate this problem. The hydrocarbon and lead residues associated with water run-off have not even been evaluated. One enterprising chemist in a town of 40,000 measured the lead levels of river water adjacent to the town's water intakes at periods following the dumping of snow removed from the city streets. He found lead levels considerably above that recommended for safe drinking water.

● CAN OUR ATMOSPHERE STAND THIS LOAD?

The Environmental Protection Agency and the State of California have been making noises about air pollution associated with motor vehicle transportation, but they refuse to recommend realistic solutions. Instead of reducing the population of motor vehicles and size of engines, they pretend that the problem will go away if the exhaust gases are only cleaned up. Now let us assume we could wave a magic wand and have every internal combustion engine run as efficiently as a human being, i.e., oxygen would be consumed from the atmosphere, and the products of combustion would be carbon dioxide and water vapor. An ideal 400 cubic inch displacement engine operating at 4000 rpm would consume as much oxygen and emit as much carbon dioxide as 1,825 humans engaged in normal activities. If we assume that only 25% of the registered motor vehicles in the United States were running at any one time during 1970 we would have produced an additional load on the atmosphere equivalent to increasing the human population by 50.8 billion people. Can our atmosphere stand this load? The evidence suggests that it cannot. The decade of the 60's produced a 12% increase in the carbon dioxide level of the upper atmosphere of the Northern Hemisphere. In other words, the proliferation of carbon dioxide consuming plants has not kept pace with the production of carbon dioxide by our transportation and industrial systems. One group of scientists have written that we need not worry because the oxygen content of our atmosphere near the surface of the ocean in the North Atlantic has not changed in the last 25 years. This is not as comforting as it may seem. It took several billion years to develop the complicated equilibrium system that we take for granted in our atmosphere. If we wait until the oxygen content of the atmosphere at the surface of the North Atlantic shows a decline, will we have time to take corrective action before the whole atmospheric balance is unretrievable?

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
100 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111

Regional Administrator, Region IX
Federal Highway Administration
Department of Transportation
450 Golden Gate Avenue
San Francisco CA 94102

Dear Sir:

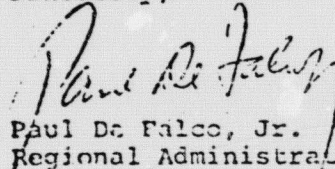
We are replying to your letter of June 19, 1972 requesting our review and comment on the draft environmental impact statement for the I-10/Papago Freeway in Phoenix, Arizona.

This freeway project, particularly the "inner loop", is one of the initial segments of a comprehensive intra-urban freeway system planned for the Phoenix metropolitan area. As such, it represents a crucial step toward a long-range commitment to a particular community transportation mode. Clearly, this decision, and the commitment it represents, will have a profound impact on future urban form and related environmental values.

Because it focuses on only one initial segment of the planned freeway system, this draft impact statement cannot reflect the fundamental significance of this transportation decision. In this sense, the I-10/Papago Freeway is not the appropriate subject for an impact statement at this time. If there is to be a true evaluation of the broad, cumulative impacts associated with the planned metropolitan freeway system, the scope of the impact statement must be significantly broadened. The Environmental Protection Agency recommends that such a comprehensive environmental impact statement be prepared prior to Federal approval of this I-10/Papago segment.

Specific comments are enclosed.

Sincerely,


Paul De Falco, Jr.
Regional Administrator

Review and comment on the draft Environmental Impact Statement prepared by the U. S. Department of Transportation, Federal Highway Administration on the proposed I-10/Paseo Freeway, Phoenix, Arizona.

For the most part, comments are directed to that portion of the project east of the Black Canyon Freeway to 32nd Street, and to the north/south section from Thomas Road to the intersection with the Maricopa Freeway.

That section of the project is one of the initial segments of an intra-urban freeway system in Phoenix. As such, it is not, as the draft impact statement allows one to believe, simply another section of freeway; rather, it is a crucial step toward a long-range commitment to a particular community transportation mode.

At this time, Phoenix has no well-developed community transit system; that is, there are no intra-urban freeways and the existing bus system is very limited. While the city has already developed a substantial dependence on the automobile, the full range of transportation alternatives is still available. The basic transportation mode which the community chooses will have a profound effect on future urban form as well as general environmental quality.

Clearly, Phoenix is at a crossroads in the long-range development of its urban form: the city will either continue its lateral sprawl, or it will begin to concentrate itself into higher densities. In a sense, Phoenix is now faced with a decision somewhat analogous to that faced by Los Angeles in the early 1940's. Now, as in the past, the decision will have profound environmental implications.

The draft impact statement fails to reflect the fundamental significance of this transportation decision. For example, in the summary, the assertion is made that "this project will have no serious or prolonged effect on land use" and that it will have "virtually no determining effect on possible lateral expansion of the urban area" (DOT's emphasis). This is quite misleading, and represents the generally myopic viewpoint of the statement. The Paseo "inner loop" cannot be considered as a single, isolated freeway project; it is an initial segment of an extensive freeway system which is now planned for the Phoenix metropolitan area. In that context, it will definitely have a determining effect on land use, lateral expansion, urban form in general, and related environmental values, particularly air quality.

A broad-scope Federal-State program frequently involves a series of individual, but cumulative, component actions. In such cases, the responsible public agency must determine, for purposes of the environmental impact statement, the appropriate definition of the "action"; that is, what is the proper scope of the impact statement in connection with such multi-phase programs? If there is an excessively narrow definition of project scope, the resulting impact statement focuses on only one individual component action, thus ignoring the broad, cumulative effects associated with the total program.

According to Council on Environmental Quality Guidelines, Federal agencies are instructed to construe a Federal action in this way:

"with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated)... In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action....."

Similarly, Department of Transportation guidelines (Policy and Procedure Memorandum 90-1) state:

"The highway section included in an environmental statement should be as long as practicable to permit consideration of environmental matters on a broad scope. Piecemealing proposed highway improvements in separate environmental statements should be avoided. If possible, the highway section should be of substantial length that would normally be included in a multi-year highway improvement program."

In this context, the most serious deficiency of this impact statement is its excessively narrow definition of project scope. I-10, as a single component of a comprehensive transportation system, is not the appropriate subject for an impact statement at this time. Instead, the need is for an impact statement which encompasses the entire program for a freeway-based transportation system in Phoenix. Such an impact statement should include a thorough discussion of the other planned freeway segments: Paradise Parkway, New River Freeway, Hohokam Freeway, Squaw Peak Freeway,

Indian Bend Freeway, and the Maricopa Freeway (southwest extension). Only in this way, will there be a true evaluation of all impacts associated with this transportation system; additionally, such a comprehensive analysis might suggest beneficial modifications, or possibly viable alternatives. The Environmental Protection Agency, therefore, recommends that such a comprehensive environmental impact statement be prepared prior to the Department of Transportation's decision to authorize Federal funds for this I-10 segment.

A second basic deficiency of this draft impact statement, somewhat related to the first, is the inadequate analysis of alternatives. The National Environmental Policy Act requires that a Federal agency, in cooperation with its local client, consider various alternatives to the proposed project. This mandate has been interpreted to mean that the public agency must actively initiate such analysis; that it cannot sit back, like an umpire, and passively resolve adversary contentions. There is no indication in this draft impact statement that DOT or the Arizona Highway Department actively developed and considered an alternative to this proposed freeway system. To be sure, the section on alternatives does review the literature on mass transit, and does generally discuss the concept of mass transit. In addition, several mass transit plans for Phoenix are described; however, these somewhat superficial proposals were developed independently by interested individuals, and are merely displayed in the impact statement. There is no indication that even these externally-prepared plans were ever part of the in-house decision-making process. Further, the statement acknowledges that the most feasible of the mass transit alternatives is an expanded, extensive rubber-tire bus system; yet there is no analysis at all of such an alternative.

Finally, the section on alternatives does not address the question of the comparative environmental impacts of freeways and mass transit. This is particularly significant in view of the fact that the proposed freeway network will drastically increase long-range reliance on the automobile, the acknowledged source of Phoenix's severe air quality problem. The statement suggests that cleaner cars and steady-state driving will result in improved air quality; yet there is no discussion of the possibility that the long-term growth of the automobile population (stimulated to a large extent by the existence of a freeway network) will negate these short-term benefits, with air quality being worse in 1992 than it is in 1972. Similarly, any mass transit system will have certain environmental implications, and these also must be evaluated.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAPITAL REGION CITIZENS COMMITTEE et al.,

:

Plaintiffs,

: CIVIL ACTION
FILE NO.
: 72-CV-254

-against-

:

JOHN A. VOLPE, SECRETARY OF TRANSPORTATION :
OF THE UNITED STATES, et al,

:

Defendants

:

:

STATE OF NEW YORK)
) SS.:
COUNTY OF SCHENECTADY)

MILDRED C. RACKO, being duly sworn, deposes and says:

1. That she is Co-chairman of the Capital Region Citizens Committee, and is familiar with the facts of the above entitled cause; this affidavit is filed in opposition to the motions of defendants for summary judgement pursuant to Rule 56 of the Federal Rules of Civil Procedure, in connection with the proposed Susquehanna Expressway (I-88) between the City of Binghamton and the Capitol District, particularly with reference to the problem of air pollution attendant upon the proposed project, the Federal Clean Air Amendments of 1970, and the increasing air pollution attendant upon urbanization, particularly with reference to the Capitol Region, the problem of climatic inversions in intensifying and aggravating the results of automotive pollution, and with regard to alternatives to the proposed action.

2. Of particular concern in this respect is the eastern terminus of the Susquehanna Expressway, now planned at Exit 25 of the Thruway; it is clear that the effect of such planning, if uncorrected, will be to funnel additional vehicular traffic, including trucks, from the corridor to Binghamton

and beyond, into the already congested Capitol District. Attached as Exhibit "A" to this affidavit is a copy of an official map of the New York State Department of Transportation, of recent date, showing major highway facilities, showing existing, committed, proposed, and corridors, in the Capitol Region. The terminus of the Susquehanna Expressway, Interstate Route 88, is shown as a committed facility, in the form of a dotted line to the left of the Region, marked by the figure "1". The accompanying Exhibit "A-1" is an official code to this map, and emphasizes the extent to which planners, for better or for worse, have committed and are committing the Capitol Region to what is primarily a highway solution for its growing transportation problems.

3. Apart from the particular implications of a continuation of this type of planning for the future air quality of the Albany region, taken up later in terms of its physical configuration to a vast geographic bowl and its susceptibility, in consequence, to the atmospheric phenomenon of climatic inversions which at times intensify air pollution problems arising from automotive and other pollution, the general problem of air pollution related to the further building of highways has been raised in other cities from the dire current condition of which Albany and its sister communities of the Capitol District may well profit. Attached as Exhibits "B" and "B-1", respectively, are a letter from the Natural Resources Defense Council, Inc., to Mayor John Lindsay, dated May 20, 1971, with regard to the proposed widening of the West Side Highway in Manhattan, its impact on air pollution in the City of New York, and its interrelationship with the National Environmental Policy Act of 1969 and the Clean Air Amendments of 1970; and, following that (Exhibit "B-1") the statement of William D. Ruckelshaus, Administrator of the Environmental Protection Agency, dated April 30, 1971, with regard to national air quality standards and the interrelationship between use of the automobile and pollution, with its eventual profound effect on U. S. cities.

4. In Washington, D.C., this growing problem has been examined in some depth by the District of Columbia Air Pollution Control Bureau in terms of its Carbon Monoxide Study for the Proposed Three Sisters Bridge, dated January 1971, which was suppressed by the D.C. Department of Highways and Traffic. Enclosed as Exhibits "C", "C-1", and "C-2" are the public release of this study by the Metropolitan Washington Coalition for Clean Air, Inc., a letter by Mr. Winder of that organization to Secretary Volpe with regard thereto, and the text of the suppressed report itself, showing that samples of carbon monoxide, taken near the Anacostia Freeway, revealed levels of this toxic pollutant four times as high as the ^{new} Federal standard. In the letter to Secretary Volpe, the Metropolitan Washington Coalition cited the preceding week's serious air inversion which had enshrouded an area from Philadelphia to Birmingham in automobile-caused pollution. Urging a halt to massive increase of urban freeways in the Washington area, it was stated, "As the automobile is responsible for approximately 70% of all pollution in the District, programs which foster the increase of automobile use absolutely can not be considered as consistent with the urgent and dire need to improve the quality of our air." See, also, Schneiderman, Cohn and Paulson, Air Pollution and Urban Freeways: Making a Record on Hazards to Health and Property (Catholic University Law Review, Fall 1970) (Exhibit "D", attached) for a current review of the health effects of highway air pollution and the general failure of highway planners to take this important factor into consideration.

5. Of particular importance with regard to this type of planning, is the physical configuration of the Capitol District itself, which renders the area particularly susceptible to air inversions. Parts of Albany itself are practically at sea level, for the mean elevation of the Hudson at this point is approximately three feet, and some slight tidal action in the River is observable, even as far north as Troy. From the River the land rises rather rapidly up to elevations of some 200 feet. In both Albany and Troy older built-up

sections rise as a series of steep steps or terraces from the River below. The whole area was under the water of a temporary lake during the Pleistocene Epoch, and a large sandy plain extending southward nearly to the Helderberg Escarpment resulted. The relative flatness of this old lake bottom makes the spread of urbanization easy. On a broader scale, south from Albany the Hudson Valley is confined between the Taconic Mountains on the east and the Helderberg Hills section of the Appalachian Upland on the west. Near the confluence of the Mohawk and Hudson Rivers, however, the valley opens out westward to form a roughly triangular lowland bounded on the southwest by the Helderberg Escarpment, on the north by the foothills of the Adirondacks, and on the east by the Taconics. The Albany-Schenectady urban system occupies much of this triangular lowland and eventually will fill it entirely. Elevations within the urban system are low; in fact, the entire area may be likened to a vast bowl whose rim is the surrounding mountains and plateaus. It is this configuration of the Capitol District, in particular, which the planners have ignored in the past, and have ignored in connection with their planning for the impact of the instant project, the relationship between increasing levels of air pollution from increased automotive traffic, on the one hand, and the climatic factors, such as weather inversions, which intensify the air pollution to even more dangerous levels, as illustrated by the 1971 inversion which enshrouded the entire region from Philadelphia to Birmingham in automobile-caused pollution.

6. As illustrative of the superficial and inadequate treatment of these major problems in the draft environmental impact statement for the segment of I-88 from the Schoharie-Schenectady County Line to Interstate Route 890, Albany and Schenectady Counties (an 18-mile segment), no mention is made of the particular geographic problems of the Capitol Region in terms of air pollution and the inversion problem. Indeed, a special point is made on the specious argument with regard to the purported salutary effect

that a new or improved highway has on reducing automotive pollutants (p.26). It may be well, in view of this common misconception among highway planners, to digress briefly to examine this point, that improvement of the flow of traffic reduces noise and air pollution. In discussing this point in a recent article in National Parks and Conservation Magazine (October, 1971), it was reported (Rooney, A., "Freeways: Urban Invaders", p.5) as follows:

"Highway defenders argue that bigger, faster roads reduce pollution. They do not. Dr. Cal Cohen of the National Institutes of Health warns: 'Although it is claimed that pollution is reduced when cars move swiftly in freeways, the opposite is true. The production per vehicle of carbon monoxide and hydrocarbons decreases, but the output of leads and oxides of nitrogen increases as cars go faster. Also, since free-flowing traffic results in more autos passing through a given area in a given time, the total output of air pollutants often rises.' Furthermore, bigger roads do not always mean faster traffic. It has been shown that when freeways reach their traffic-carrying capacity, which usually happens during rush hours, cars move at an average speed of only 20 miles per hour and often much less on ramps, with traffic at bottlenecks coming to a complete standstill. At these speeds--or lack of them-- carbon monoxide and hydrocarbon outputs are at their lethal highest. Rather than build bigger roads in order to implement clean air standards set by law, we may, as the Environmental Protection Agency suggests, have to ban autos from six or seven of the largest U.S. cities by 1975."

To continue, however, with the inadequacies in this respect of the subject draft statement, the conclusion of the planners, after negating air pollution with regard to specific areas, is as follows (p.29):

"Although the automobile contributes heavily to general air pollution, it should be remembered that this is primarily a regional problem, rather than one associated solely with a new expressway. The problem must, in the long run, be solved primarily through technological improvement of the internal combustion engine or through substitution of other power sources."

(p. 34)

"thirty to sixty homes in Rotterdam *** could be affected by increased noise and, to some extent, air pollution levels, varying from a slight to a significant effect. Air pollution does not appear to be a factor for any other area in the project corridor " ***

This summary finessing of the air pollution problem, in light of the major questions raised in the scientific community and the growing administrative concern with the problem, is hardly to be reconciled with the proper performance of defendants' duties under the terms of the National Environmental Policy Act of 1969, particularly with regard to their report of the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action and the other criteria set forth in the Act; in fact, the impression one gets in a reading of the draft environmental impact statement is that of a somewhat apprehensive gambit on the part of the highway planners that if they ignore the problem of air pollution it will, somehow, just blow away. Unfortunately, that is not the case, and there is a real problem in this area whether or not this highway should in fact be built at all; that is, subject to further study of the air pollution problem on an intensive basis, and on a much broader scope than is presented by the current reports, whether the alternatives of improvement of existing Route 7 to meet local traffic needs, together with a revitalization of the now-deteriorating rail facilities of the corridor, may not better serve the general public and the communities of the corridor than the superimposition in the corridor of still another highway, as the rail sector continues to decline. It is precisely to facilitate the determination of these larger questions of public policy that the procedures of the National Environmental Policy Act of 1969 were established by the Congress; it is the perversion of these procedures to evade the Congressional mandate and to rationalize existing administrative policies by ignoring their full environmental consequences that the Court is respectfully requested to correct

in the instant situation. Before the transportation needs of this corridor can be effectively planned, the Department of Transportation must know the facts, and all of the facts, with regard to the environmental impact of the project and its alternatives. The problem of air pollution and automobile is a major environmental problem with regard to this project, and the facts must be fully resolved before any further commitment is made to a highway solution in this context.

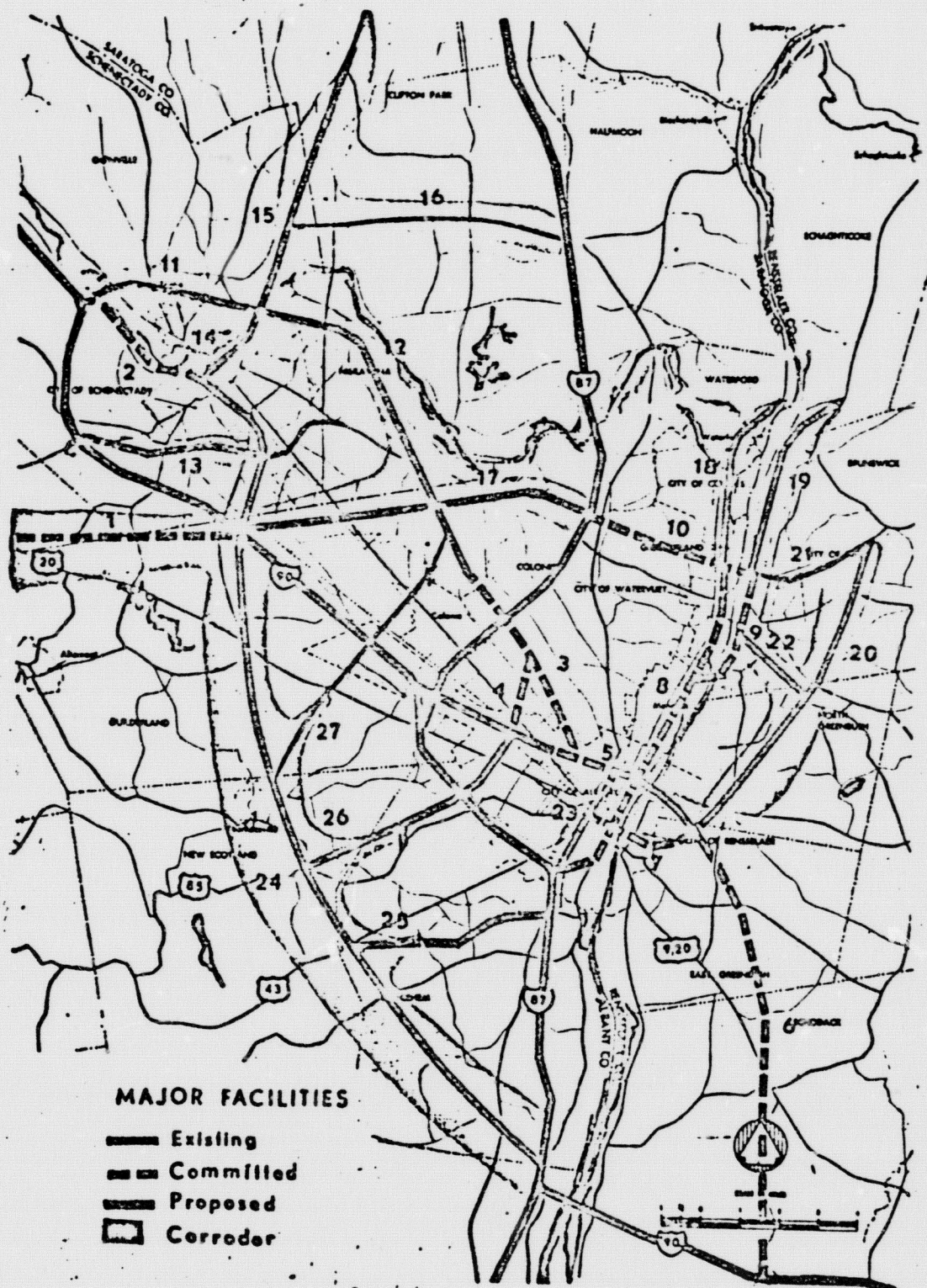
Medard C Racko

Sworn to before me this

17th day of October, 1972.

Barbara Reedy
Notary Public

BARBARA REEDY
NOTARY PUBLIC, State of New York
Appointed Schenectady County
Commission Expires March 30, 1974



MAJOR FACILITY KEY LISTM.F.

- 1 - Interstate Route 88
- 2 - I-890, Campbell Road to Exit 26
- 3 - I-687, I-90 to I-87
- 4 - Albany Crosstown Extension, I-90 to I-687
- 5 - I-90 Northside Arterial, Everett Road to No. Pearl St.
- 6 - I-90, "Couse" to Berkshire Thruway
- 7 - South Mall Arterial & Expressway, I-787 to I-90
- 8 - I-787, Riverfront Arterial, Thruway to Hoosick St.
- 9 - Troy North-South Arterial, Menands Bridge to Hoosick St.
- 10 - Alternate Route 7, Green Island to I-87
- 11 - Scotia Bypass, Exit 26 to Alternate Route 50
- 12 - Albany-Schenectady Expressway, Alt. Rte. 7 to Alt. Rte. 50
- 12A - Albany-Schenectady Expressway, I-87 to Alternate Route 7
- 13 - Rotterdam Arterial, Schenectady Crosstown to Route 7
- 14 - Erie Boulevard Extension, I-890 to Albany-Schenectady Exp.
- 15 - Alternate Route 50, Scotia Bypass to Route 50
- 16 - Route 146 Arterial, Alternate Route 50 to I-87
- 17 - Alternate Route 7, I-87 to Exit 26
- 18 - Cohoes-Waterford Arterial, Maplewood to Waterford
- 19 - Troy North-South Arterial, Hoosick St. to Speigletown
- 20 - Brunswick Arterial, Troy South City Line to Route 7
- 20A - South Mall Expressway Extension, I-90 to Troy City Line
- 21 - Hoosick Street Arterial
- 22 - Troy East-West Arterial, So. Mall Expressway Ext. to Troy N-S
- 23 - Mid-Crosstown Arterial, Exit 23 to I-90
- 24 - Selkirk-Schenectady Expressway (By-Pass)
- 25 - Delmar Bypass Extension
- 26 - Slingerlands Bypass
- 27 - Route 155, Route 20 to Route 85A

New York State
Department of Transportation

Copy by:
Capital Region Citizens Committee

Natural Resources Defense Council, Inc.

30 WEST 44TH STREET
NEW YORK, N.Y. 10036

212 986-8310

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May 20, 1971

Mayor John Lindsay
The City Hall
New York, N.Y.

Dear Mayor Lindsay:

We read with interest the story in the New York Times (Sunday, May 16, 1971, page 67) about the proposal to widen the West Side Highway and the Belt Parkway.

Any plan to widen these highways would contribute substantially to the air pollution in the City of New York, and might well, in our judgment, run afoul of the federal Clean Air Amendments of 1970 and the National Environmental Policy Act.

As you know, the Clean Air Amendments require each State to attain national primary ambient air quality standards in every part of the State by 1975 in order to protect the public health. In order to reach these standards, each State must promulgate a State implementation plan by February of 1972. The Administrator of the federal Environmental Protection Agency is required to reject any State plan which will not assure attainment of these standards in the allotted time.

The federal Act requires that as part of State plans, traffic controls and other measures must be imposed where necessary to assure the required air quality. Mr. Ruckelshaus has already said that such measures will be required in New York in order to assure healthy air here by 1975 (Statement of Mr. Ruckelshaus, at his press conference, April 30, 1971. Copy enclosed).

BEST COPY AVAILABLE

Given present levels of air pollutants in New York City, this means that the New York State plan almost inevitably must include measures to reduce the amount of automobile traffic permitted in New York City. Such measures could take a number of forms, including closing streets to vehicular traffic, charging higher tolls at the bridges and tunnels, or giving individual permits to commuters allowing them to enter the City on limited numbers of days.

Building additional highway capacity, however, would be incompatible with any plan to reduce pollution. If no measures of the sort described above were taken, additional highway capacity would only encourage greater use of the automobile, with increased pollution from additional cars using the expanded highways and entering the City's streets from the highways. If measures were taken to reduce traffic volume, the additional roadways and money spent on them would merely be wasted, since they would be unnecessary. The disruption of City parks and recreation areas described in the Times article would then be an additional cost with no compensating benefit.

We frankly doubt that Administrator Ruckelshaus could legally approve a State implementation plan for New York which did not include major reductions in automotive traffic in New York City. If he did, the propriety of building additional traffic capacity within the City would almost certainly become an issue in a law suit challenging his approval, and a court decision might well halt the expansion of the two highways. A court might also require restrictions on traffic which would render the expanded highway useless and wasted.

Furthermore, federal financing for these projects would appear to be inconsistent with the mandate of §103 of the National Environmental Policy Act, which obligates all federal agencies

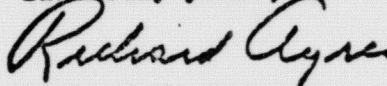
Page 3

to conduct their programs in such a way as to preserve and protect the environment. NEPA expressly overrides authorizing legislation of federal agencies so that should DOT fund the projects, it would run the risk of a NEPA lawsuit. It is thus possible that DOT would not legally be able to provide the federal funds which the Times article implies are a major consideration in the proposed expansion.

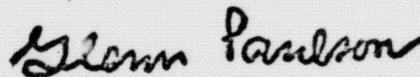
These comments are offered as information to aid you in your consideration of the proposed projects. We believe that the proposed expansions raise serious legal questions, which we feel must be considered before any decision is made to go ahead with the projects.

We will be watching with interest the developments in this situation.

Sincerely yours,



Richard E. Ayres,
Project Director
Project on Clean Air



Glenn Paulson, Ph.D.
Staff Scientist

REA:sw

cc: Governor Nelson Rockefeller
Constantin Sidamon-Eristoff
Jerome Kretchmer
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ENVIRONMENTAL NEWS

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FOR RELEASE AFTER 10:30 A.M. FRIDAY, APRIL 30, 1971

EPA SETS NATIONAL AIR QUALITY STANDARDS

William D. Ruckelshaus, Administrator of the Environmental Protection Agency, today announced final publication of National air quality standards for six common classes of pollutants -- sulfur oxides, particulate matter, carbon monoxide, photochemical oxidants, nitrogen oxides and hydrocarbons.

The Clean Air Act required him to set pollution limits at levels that protect the public health and provide an adequate margin of safety. States are required to plan to meet the standards by 1975.

"These are tough standards," Ruckelshaus said. "They are based on investigations conducted at the outer limits of our capability to measure connections between levels of pollution and effects on man. In the case of carbon monoxide, one of the most important automobile pollutants, we have set a standard to protect against effects reported by investigations which prompt arguments even among our own scientists. In the case of photochemical oxidants, also largely contributed to by automobiles, our standards approach levels that occur fairly commonly in nature.

"The legislative history of the Clean Air Act makes it plain, he added, "that when we talk about protecting the 'public health' against polluted air, we are talking about protecting those citizens who are particularly sensitive to it--in other words, those citizens already afflicted with cardio-respiratory problems. If we have erred at all in setting these standards, we have erred on the side of public health."

Ruckelshaus emphasized that meeting these standards in the time allowed by the law will have a profound effect on U.S. cities. He said the carbon monoxide problem would be difficult to solve. "Of seven major cities where we have good enough data to make accurate predictions, only one--Cincinnati, Ohio--will come close with the presently contemplated automobile controls in the time allowed. And Cincinnati will not actually reach the standard until 1977," he said.

Ruckelshaus said that in the other six cities--Chicago, Denver, Los Angeles, New York, Philadelphia and Washington--the Federal motor vehicle control program would not bring air pollution down to the standard until sometime in the 1980's.

"If we are to meet the legal deadline for carbon monoxide, then, some cities may have to require drastic changes in their commuting habits," he added.

He said most regions of the country can meet the deadline for sulfur oxides and particulates by switching to low sulfur fuels already available to these regions, and by a much more rigorous application of existing methods for controlling particulate matter.

He said some increase in electric bills might result, "but the resources are there."

He said seven metropolitan areas might have serious trouble meeting the sulfur oxides and particulate standards. "The problem is particulates, and the most difficult case from a control standpoint is New York," he said. "We estimate that to bring air pollution levels down to the standard for particulates in New York will require a 300 percent increase in natural gas usage in the city. The only encouraging feature in the prognosis is that curing the particulate problem with natural gas will also take care of the sulfur oxides problem." He forecast somewhat less serious difficulties for Chicago, St. Louis, Baltimore, Hartford, Buffalo, and Philadelphia.

"All in all," he explained, "meeting the particulate standard in the time allowed by the law in these seven cities will require increasing our total national use of natural gas by about 15 percent, and almost half that increase would go to New York City alone. Unless other sources of natural gas are developed, such an increase in the use of this fuel might soon reduce what has been considered a desirable balance between reserves and consumption."

Ruckelshaus said the relationship between levels of hydrocarbons and nitrogen oxides in the air and the production of photochemical oxidants is so complex and at this juncture so little understood, that it is difficult to predict whether or not the Nation will meet the standards for these pollutants in the time allowed by the law. "I am advised that the prospects for achieving significant control of existing stationary sources of the nitrogen oxides themselves in the

time allowed by the law are bleak", he said. "However, the picture has its promising aspects. The Federal program for reducing emissions of hydrocarbons and nitrogen oxides from new automobiles, plus the regulations that we will soon issue for controlling nitrogen oxide emissions from new and modified electric power plants, should carry us a considerable distance down the road to an air quality that we and our children can enjoy."

METROPOLITAN WASHINGTON COALITION FOR CLEAN AIR, INC.

1714 MASSACHUSETTS AVENUE, N.W., WASHINGTON, D.C. 20016 (202) 234-7100

FOR IMMEDIATE RELEASE
Thursday, July 29, 1971contact: John Winder
234-7100MCCA Releases Pollution Study -
URGES VOLPE TO STOP BRIDGE & HIGHWAY SUPPORT

The Metropolitan Washington Coalition for Clean Air today released a Carbon Monoxide Study for the Proposed Three Sisters Bridge which was prepared by the D.C. Air Pollution Control Bureau and which was suppressed by the D.C. Department of Highways and Traffic. In a letter to DOT Secretary Volpe, the Executive Director of the Coalition for Clean Air, John Winder, urged the Department of Transportation to reconsider its support of the Bridge and proposed freeway system for the District in light of this Study.

Samples of carbon monoxide, taken near the Anacostia Freeway, revealed levels of this toxic pollutant four times as high as the new Federal standard. In the letter to Secretary Volpe, the MCCA cited last week's serious air inversion which enshrouded an area from Philadelphia to Birmingham in automobile-caused pollution. Urging a halt to the massive increase of urban freeways in the Washington area, Winder stated, "As the automobile is responsible for approximately 70% of all pollution in the District, programs which foster the increase of automobile use absolutely can not be considered as consistent with the urgent and dire need to improve the quality of our air."

The Coalition also pointed out that not only had the D.C. Highway Department failed to release this information to the public but also the Three Sisters Bridge Design Report, subsequently prepared by the Department, included some highly misleading information, inconsistent with the air pollution Study.

Affiliated with the District of Columbia Tuberculosis and Respiratory Disease Association

Exhibits "C", "C-1", "C-2"

METROPOLITAN WASHINGTON COALITION FOR CLEAN AIR, INC.
3714 MASSACHUSETTS AVENUE, N.W., WASHINGTON, D.C. 20036 (202) 234-7100



July 28, 1971

The Honorable John A. Volpe
Secretary of Transportation
Federal Office Building - 10-A
800 Independence Avenue, S. W.
Washington, D.C. 20590

Dear Secretary Volpe:

On behalf of the Metropolitan Washington Coalition for Clean Air, I urgently request you to reconsider your support of Three Sisters Bridge and connecting roadways construction in light of the enclosed Carbon Monoxide Study for the Proposed Three Sisters Bridge and in light of the fact that the Metropolitan Washington area can ill-afford any further increase in pollution: witness the inversion that blanketed the Washington area for three days last week, July 22-24.

The construction of the Three Sisters Bridge and connecting roadways will increase the concentration of toxic pollutants which are already in excess of that level at which detrimental effects to health and welfare occur. This pollution increase will be an additional burden imposed on District residents, many of whom will be displaced as homes are demolished and communities are dissected. Our concern with the problem of automobile pollution in the District has increased with the discovery of the Carbon Monoxide Study, which was conducted by the D.C. Bureau of Air Pollution Control at the request of the D.C. Department of Highways and Traffic, and completed prior to the December, 1970 Bridge Design Hearings. Both of the aforementioned District agencies have refused to make this study public and the D.C. Highway Department has gone so far as to print deceptive air pollution information in its "Design Report," published three months after the Study had been completed.

The Carbon Monoxide Study showed "an extremely high level of carbon monoxide at all test locations," and that the CO levels "constituted a detrimental situation." Data included in the Study report carbon

 Affiliated with the American Lung Association and the American Association of Respiratory Diseases

Exhibits "C", "C-1", "C-2"

Secretary Volpe /July 28, 1971/ page 2

monoxide measurements reaching levels as much as four times in excess of the Federal Ambient Air Quality Standards. The Federal Air Quality Criteria documents reveal tests proving detrimental health effects resulting after exposure to only 10 ppm, while the air pollution Study shows District CO levels reaching 40 ppm.

Inhalation of carbon monoxide causes a reduction in the oxygen-carrying capacity of blood; dilation of the chambers of the heart, degeneration of heart muscle, and cortical damage. There are detrimental effects on the central nervous, vascular, and respiratory systems; impairment in time discrimination and certain other psychomotor tests; and changes in visual acuity and relative brightness threshold. People most sensitive to effects of CO are those with anemia, vascular diseases, abnormal metabolic states (including fever), chronic pulmonary diseases, and unborn babies in the fetal stages. "In addition to the groups identified as most sensitive, individuals requiring maximal judgemental and functional ability may be an important group to consider in the discussion of health effects associated with CO. Automobile drivers are the largest group of individuals in this category." (HEW Air Quality Document for Carbon Monoxide.)

The air inversion of July 1970, the two inversion potentials reported earlier this year, and the actual inversion which lasted for three days this past week must be considered as a warning that the District of Columbia is headed for a catastrophe unless there is a concerted effort to reduce the sources of air pollution. As the automobile is responsible for approximately 70% of all pollution in the District, programs which foster the increase of automobile use absolutely can not be considered as consistent with the urgent and dire need to improve the quality of our air.

Officials in the Environmental Protection Agency have repeatedly advised the District and other local jurisdictions to implement traffic bans and similar auto-use-reduction programs in order to meet the Federal Ambient Air Quality Standards.

William Ruckelshaus, EPA Administrator, recently stated, "If we are to meet the legal deadline for carbon monoxide, then some cities (including Washington) may have to require drastic changes in their commuting habits..."

In addition, the EPA Guidelines for development of State Implementation Plans advises, "In a region in which attainment and maintenance of a national standard will require emission reductions in addition to those which will result from application of the Federal motor vehicle emission standards, the control strategy shall provide for application of such emission limitations or other measures as may be necessary for attainment and maintenance of such national standard, including but not limited to the following: "-measures to reduce motor vehicle traffic

Secretary Volpe /July 28, 1971/ page 3

and to expand or promote the use of mass transportation facilities.
(Section 420.14 Control Strategy.)

In addition to the dangerously high CO levels included in the Study, hydrocarbon measurements were at times too high to be recorded. As hydrocarbons are the precursors to photochemical oxidants (smog), these levels must not be ignored. Yet, equally if not more frightening than the critically high CO and hydrocarbon measurements is the fact that the Carbon Monoxide Study has been suppressed by the D.C. Government agencies and thus hidden from public review. The D.C. Department of Highways and Traffic has gone even further in its deception and published highly misleading information in its public document, "Design Report - I-226 Bridge and Approach Roadway." The Report mentions recent monitoring, which may be assumed to be the enclosed air pollution Study, yet the hydrocarbon measurements are not mentioned at all and the maximum levels of CO cited are lower than the maximum levels documented by the air pollution Study.

If the health, welfare, and safety of the American people are to be considered more important than highway construction projects, I ask the Department of Transportation to most seriously review its support of the proposed Three Sisters Bridge and connecting roads and all other highway projects planned for this city. This review should take into account the policy and requirements of the National Environmental Policy Act, and scientific knowledge of the damaging effects to health from exposure to carbon monoxide, photochemical oxidants, and nitrogen oxides - all of which are emitted from the automobile. This review should also consider the causes of the two Washington air inversions within one year, and the two recent air inversion potentials.

Again, Mr. Secretary, I most urgently plead for your consideration of the health and welfare of District residents and ask that you (1) require a complete, comprehensive, and objective air pollution/freeway/health effects study; (2) withdraw support of any further highway and bridge construction in the District until this study has been released to the public and thoroughly reviewed by competent authorities; and (3) actively promote the release of funds for construction of the METRO in order that area residents may, for the first time, be granted a choice between the automobile and public, rapid transportation.

Very truly yours,

John S. Winder, Jr.
Executive Director

Enclosure: Carbon Monoxide Study for the Proposed Three Sisters Bridge

JSW/ka

Exhibits "C", "C-1", "C-2"

CARBON MONOXIDE STUDY FOR
PROPOSED THREE SISTERS BRIDGE

Prepared by

William N. Egan
D. C. Air Pollution Division
Health Services Administration
Department of Human Resources
25 "K" Street, NE
Washington, D. C. 20002

Report of Joint Study by the District
of Columbia Department of Human Resources
and Department of Highways & Traffic

January 1971

Exhibits "C", "C-1", "C-2"

ABSTRACT

The purpose of this study was to provide experimental data of the carbon monoxide levels and dispersion characteristics as-simulating conditions for the proposed Three Sisters Bridge (I-266) in Georgetown. An acceptable site (a level six lane freeway with minimal contributing sources of carbon monoxide) was found on the Anacostia Freeway (I-295). Seven bag sampling units for collection of air samples were established at the site. The data showed that carbon monoxide levels are consistent with volume of rush hour traffic, wind direction and velocity, and traffic flow pattern considerations. The study, although limited in scope, showed an extremely high level of carbon monoxide at all test locations when traffic was stalled. Dispersion at 100 ft. during stalled traffic flow was not substantial for the average wind levels and the CO levels still constituted a detrimental situation.

Recommendations with regard to the environmental effects of six lane freeways in general must await more detailed testing. This limited study, however, shows the environmental inadvisability of congestion traffic patterns at the location tested.

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- II. Site Selection
- III. Final Site Selection
- IV. Carbon Monoxide Monitoring Method
- V. Power Source
- VI. Meteorological Monitoring
- VII. Data Discussion
- VIII. Conclusion

CARBON MONOXIDE STUDY FOR PROPOSED THREE SISTERS BRIDGE

I. Purpose

The purpose of this study was to provide experimental data of the carbon monoxide levels and dispersion characteristics assimilating conditions for the proposed Three Sisters Bridge (I-266) in Georgetown.

II. Site Selection

To select a suitable site, comparable to the topographical and other environmental features that would be present at Three Sisters, the following were established as criteria:

A. A six lane freeway, with median strip that handled a sufficient volume of traffic to make rush hour traffic density comparable to that expected at proposed Three Sisters Bridge.

B. A level site as possible with little or no grade between the freeway and surrounding ground.

C. Other minimal contributing sources of carbon monoxide in the area such as overpass or underpass roads, adjacent highways, buildings, industrial or municipal incineration, etc.

D. A noncontributing source of electrical power for carbon monoxide sampling units.

E. Preferably a site within the District so as to have comparable background levels of CO (that are particular to the urban area).

III. Final Site Selection

Sites were reviewed at:

A. The approach to the 14th Street Bridge (I-95) on the District side.

B. The approach to the Memorial Bridge on the Virginia side.

-2-

C. The approach to the Theodore Roosevelt Bridge (I-66) on the District side.

D. The Anacostia Freeway (I-295) south of the Sulland Parkway at St. Elizabeth's Hospital.

E. The Anacostia Freeway (I-295) at the northbound exit ramp to the 11th Street Bridge.

All except site (e) were rejected for failing to meet one or more of the conditions of Section II. The Field Study was conducted from December 8, 1970 up to and including December 11, 1970 at the site (e).

IV. Carbon Monoxide Monitoring Method.

The study desired to focus on both the immediate and surrounding area (for dispersion characteristics). Seven different locations were monitored to obtain representative carbon monoxide levels. Sites were placed at:

1. 100 ft. East of Curb
2. 50 ft. East of Curb
3. East Curb
4. Median
5. West Curb
6. 50 ft. West of Curb
7. 100 ft. West of Curb

It was necessary to have the median site about 150 feet up the freeway where the median widened sufficiently to permit safe sample work. (See Map)

At each of the seven sites, a mylar plastic bag sampling unit was placed. A unit consisted of a 1.5 amp pump (De Vilbiss), a 4 cubic feet mylar plastic bag and associated connection tubing. The sample flow rates were set to draw four cubic feet of air into a bag in a fifteen minute collection time. At a signal from the test supervisor the seven units were activated by separate switches.

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Exhibits "C", "C-1", "C-2"

-3-

then stopped exactly fifteen minutes later by another signal. After securing the bag tightly all seven samples were taken to the Continuous Air Monitoring Project (CAMP) station at 427 New Jersey Avenue, NW for analyzation. This analysis was done by connecting the bag outlet to the continuous CO (INTERTECH) monitoring unit and recording the strip chart level (The INTERTECH employs infrared analysis for CO). After being flushed with air, the bags were returned to the test site for further samples. Samples were taken as often as possible during the morning (6:30-9:00 A.M.) and evening (4:00-6:30 P.M.) rush hours with one or two samples taken between 9:00 A.M. and 4:00 P.M..

In addition to carbon monoxide analysis, the bag samples were checked for total hydrocarbon content using a Beckman flame ionization unit.

V. Power Source

Two portable generators of 5000 watts output each were used for power sources for the units. They were always placed downwind to minimize contributions to the carbon monoxide total.

VI. Meteorological Monitoring

A anemometer was used to measure wind velocity and direction at the test area. In addition Weather Bureau temperature and wind conditions were secured for each sample period. The Weather Bureau station is located approximately 3 miles away at Washington National Airport.

VII. Data Discussion

The data shows that carbon monoxide levels are consistent with volumes of rush hour traffic, wind direction and velocity, and traffic flow pattern considerations. Every morning of the study traffic northbound (approaching the 11th Street Bridge) was backed up and stalled in two curb lanes. This induced the high CO levels of stations 1, 2, 3, and 4. Then during the evening rush period, traffic, although not stalled, was heavy southbound and the higher CO levels at stations 4, 5, 6 and 7 reflect the heavier traffic.

Also, wind velocity and direction were an important factor. Wind, depending on its characteristics, will carry the high concentrations of carbon monoxide out to the 50 feet and 100 feet positions; or enough wind (usually above 20 m.p.h.) will disperse the CO and reduce the level at the positions.

Examples: The lowest concentration at all points occurred when the wind velocity was greatest (12-8-70, 1327-1342) and when traffic was lightest (all days at approximately 1200-1300). Highest concentrations at points 1-3 occurred during the morning rush hours (especially 12-10-70 when traffic was extremely heavy) and when the wind was blowing from the North. While consistently higher concentrations at points 5-7 occurred in the evening rush hours, the maximum concentration occurred at those points when the wind was blowing the morning pollutants in the direction of the units 5-7 locations (12-11-70, 0720).

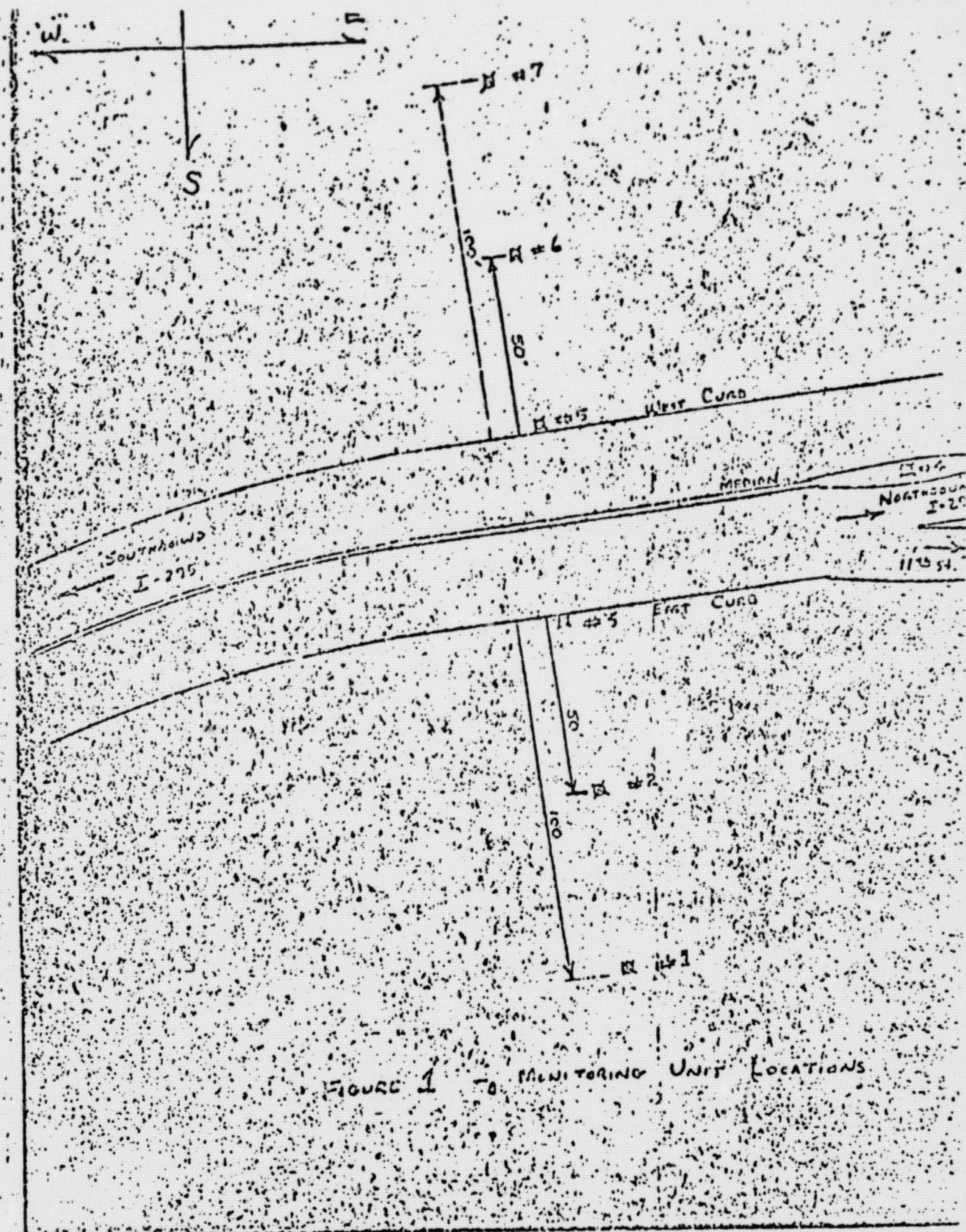
VIII. Conclusion

The results show carbon monoxide levels for a six lane highway under varying wind and traffic conditions. The study is limited in the sense that only 3 1/2 days of sampling were conducted, but it is representative of freeway conditions in normal and heavy traffic volumes.

The data shows an extremely high level of carbon monoxide at the median, curb, and outlying locations when traffic is stalled. The levels of CO are high at all rush hour periods, but when congestion forces periods of idle engine running by rows of cars, the emissions become undesirable. Dispersion at 100 ft. during these peaks was not substantial for the average wind levels (11 m.p.h.) encountered in this study and the CO levels still constituted a detrimental situation.

This study was conceived and incorporated in a very short time period. It would be desirable to have a more thorough study made with continuous monitoring units in operation. Also, for a short-term study it would be beneficial to have a non-computerized traffic counter available at the monitoring location so traffic count could be recorded when samples were taken.

Recommendations with regard to the environmental effects of six lane freeway in general would await that thorough testing. This limited study, however, shows the environmental inadvisability of congestion traffic patterns at the location tested.



Exhibits "C", "C-1", "C-2"

A-193

DATA: CARBON MONOXIDE

in is in Parts Per Million)

	CO CHMP	#1 100 EC	#2 50 EC	#3 EC	#4 Med	#5 WC	#6 50 WC	#7 100 WC	Temp Site	R. H. Site	Wind	Area Wind	Traffic Count NLB	Traffic Count SLB
-1342	3.0	3.0	3.0	4.0	4.0	4.0	3.0	2.0	36	46	SSW31	SSE4	444	445
-1518	3.0	2.0	4.0	5.0	7.0	5.0	3.0	2.0	40	44	SSW17	SSE 6	661	711
1658 ✓	-	4.0	4.0	7.0	-	11.0	5.0	-	38	41	SSW17	SE2	635	1069
1836 ✓	5.0	3.0	4.0	4.0	10.0	8.0	6.0	5.0	37	44	S10	SSE2	413	612
2101	-	3.0	3.0	4.0	7.0	7.0	4.0	4.0	35	52	SSW13	SSE4	360	410
0551 ✓	3.0	3.0	6.0	12.0	10.0	6.0	4.0	-	35	59	SSW9	SE4	1248	595
0818 ✓	5.0	4.0	4.0	9.0	21.0	7.0	4.0	3.0	36	59	SSW9	SSE4	875	455
0940 /	5.0	3.0	4.0	5.0	7.0	4.0	3.0	3.0	45	45	SSW12	SSW8	395	390
-1336	3.0	2.0	4.0	2.0	7.0	6.0	4.0	3.0	31	38	S9	SE2	377	420
-1443	4.0	4.0	4.0	7.0	9.0	6.0	5.0	4.0	56	38	S9	SE3	534	720
-1640	5.0	5.0	7.0	13.0	22.0	12.0	7.0	5.0	60	32	SSW14	SSE4	540	1066
-1728	7.0	4.0	5.0	11.0	13.0	12.0	8.0	6.0	58	36	SSW13	ESE4	431	869
-1915	4.0	3.0	5.0	6.0	7.0	5.0	4.0	3.0	58	44	SW13	S4	385	408
0														
-0630	3.0	9.0	9.0	10.0	9.0	8.0	5.0	5.0	43	79	SSW6	S2	1104	626
-0725	7.0	20.0	23.0	34.0	24.0	8.0	8.0	8.0	50	68	WNW13	S1	1208	555
1-0348	6.0	14.0	18.0	33.0	18.0	6.0	6.0	5.0	43	79	ESE3	SW4	503	380
1-1015	3.0	4.0	5.0	6.0	7.0	4.0	4.0	3.0	55	33	SSW9	WNW6	338	389
1-1304	3.0	3.0	4.0	5.0	5.0	4.0	5.0	2.0	66	42	WNW16	NW6	373	418
1-1519	4.0	5.0	7.0	8.0	8.0	4.0	4.0	4.0	53	43	WNW15	WNW4	606	1126
5-1620	4.0	7.0	9.0	14.0	19.0	6.0	6.0	5.0	52	45	N12	N7	740	779
5-1810	5.0	5.0	6.0	8.0	13.0	14.0	7.0	6.0	46	54	N6	Calm	463	452
0-1925	4.0	6.0	6.0	6.0	8.0	5.0	5.0	5.0	45	56	NE5	N2	400	423

Exhibit "C" "C-1" "C-2"

Exhibits "C" "C-1" "C-2" A-194

DATA Continuation Sheet:

TIME	CO Ca-2	#1 100 EC	#2 50 EC	#3 EC	#4 Med	#5 WC	#6 50 WC	#7 100 WC	Temp Site	R. H. Site	Wind	Area Wind	Traffic Count NLE	Traffic Count SLE
12/11 0622-0637	5.0	9.0	7.0	12.0	17.0	11.0	8.0	9.0	37	86	NE6	NE1	614	436
0720-0735	7.0	14.0	14.0	24.0	40.0	19.0	13.0	12.0	38	83	NE7	NNE6	1284	603
0915-0930	14.8	4.0	5.0	8.0	10.0	9.0	7.0	15.0	40	79	E5	ENE2	450	438
1008-1023	6.0	2.0	4.0	4.0	12.0	8.0	6.0	4.0	48	63	ESE8	Calm	418	485
Average	5.0	6.0	6.8	9.3	12.0	7.5	5.5	4.7	46	49	SSW11	SSSE4	608	585
Maximum	14.8	20.0	25.0	24.0	40.0	19.0	13.0	13.0	66	86	SSW31	SSW8	1286	1126
Date/Time	12/11 0915	12/10 0710	12/10 0710	12/10 0710	12/11 0720	12/11 0720	12/11 0720	12/11 09.5	12/10 1150	12/11 0622	12/8 1327	12/9 0625	12/11 0720	12/10 1504
Minimum	4.0	2.0	3.0	2.0	4.0	4.0	3.0	2.0	35	32	E-13	Calm	328	380
Date/Time	Many	12/9 1321	12/8 1327	12/9 1321	12/8 1327	Many	Many	Many	12/9 0636	12/9 1625	12/10 0833	12/10 1755	12/10 1000	12/10 0833
LOG:	CO = Carbon Monoxide EC = East Curb WC = West Curb Temp = Temperature NLE = North Bound Lane SLE = South Bound Lane ALL DATA IS IN PARTS PER MILLION													

Exhibits "C", "C-1", "C-2"

Exhibits "C" "C-1" "C-2"

A-195

A continuation sheet:

E	HC Cm	#1 100 EC	#2 50 EC	#3 EC	#4 Med	#5 WC	#6 50 WC	#7 100 WC	Temp Site	R. H. Site	Wind	Area Wind	Traffic Count NBL	Traffic Count SBL
0637	3.4	6.8	6.8	6.6	6.6	6.6	4.4	6.4	37	86	NE6	NE1	614	436
0735	7.0	5.2	5.6	5.8	7.0	5.2	5.0	4.4	38	83	NE7	NNE6	1289	603
0933	3.6	3.2	3.2	3.8	3.6	3.6	3.2	2.0	40	79	E6	ENE2	450	438
1323	3.0	2.6	3.0	3.2	3.2	3.2	3.2	2.8	43	63	ESEB	Calm	418	435
1500	2.0	2.6	2.7	3.1	2.9	2.8	2.6	2.2	46	49	SSW11	SSE4	608	598
1600	7.0	6.8	6.8	6.6	6.6	6.6	5.0	6.4	66	86	SSW31	SSW9	1289	1126
Time	12/11	12/11	12/11	12/11	12/11	12/11	12/11	12/11	12/10	12/11	12/8	12/9	12/11	12/10
	0720	0622	0622	0622	0622	0622	0720	0720	1250	0622	1327	0925	0720	1504
1600	1.8	1.8	1.8	1.8	2.0	1.8	1.8	1.8	35	32	ENE3	Calm	325	380
Time	12/8	12/8	12/8	12/8	12/8	12/8	12/8	12/8	12/9	12/9	12/10	12/10	12/10	12/10
	1327	1327	1327	1327	1327	1327	1327	1327	0636	1625	0933	1755	1000	0833

HC = Hydrocarbons
 EC = East Curb
 WC = West Curb
 Temp = Temperature
 NBL = North Bound Lane
 SBL = South Bound Lane

ALL DATA IS IN PARTS PER MILLION

Exhibits "C", "C-1", "C-2"

Exhibits "C", "C-1", "C-2"

A-196

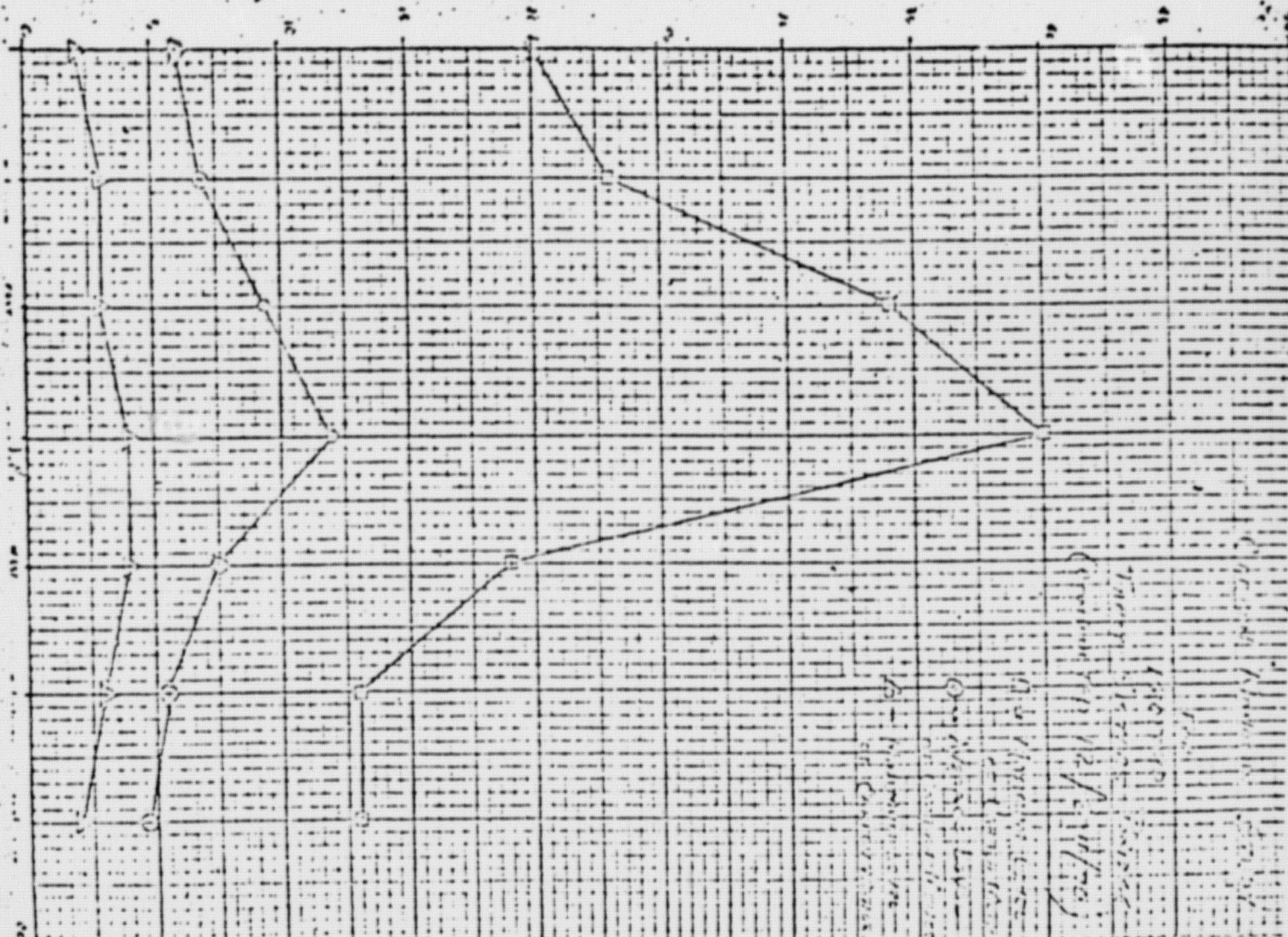


Exhibit "D"

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Air Pollution and Urban Freeways: Making a Record on Hazards to Health and Property

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Urban freeways carry vehicles powered by the internal combustion engine. The exhaust emissions produced can have substantial and serious effects on human health, but the possibility of such harm is virtually ignored in highway location proceedings today. Basic data telling the air pollution story is never assembled. Instead, highway planners rely on incomplete and unsophisticated generalizations. The ingredients of an adequate record on air pollution effects of a proposed new urban freeway are available. Only with such facts on health hazards can the legal and psychological momentum of the freeway be overcome.

Health Effects of Highway Air Pollution

The Pollutants

The primary dangerous substances produced by internal combustion engines are carbon monoxide (CO), unburned hydrocarbons, oxides of nitrogen (NO_x), lead, partial oxidation products, and particulate matter.¹ These emissions contribute 50 to 80 percent of urban air pollution.² Some, such as CO and hydrocarbons, are emitted most heavily when the engine is idling and at low speeds;³ others, such as NO_x and lead, are produced most heavily at high speeds and during rapid accelerations.⁴

1. Harn, *Mobile Combustion Sources*, in 3 *AIR POLLUTION* 56-63 (2d ed. A. Stern 1968).

2. NATIONAL TUBERCULOSIS AND RESPIRATORY DISEASE ASSOCIATION, *AIR POLLUTION PRIMER* 34 (1969).

3. 3 *AIR POLLUTION*, *supra* note 1, at 57-60.

4. *Id.* at 60-61. See also Hirschler, *Particulate Lead Compounds in Automobile Exhaust Gas*, 49 *INDUS. & ENG'G CHEM.* 1131 (1957).

These substances are harmful and impair human ability to function normally. Auditory discrimination deteriorates significantly at CO concentrations as low as 50 parts per million (ppm).⁶ Ability to perform simple mathematical tasks is impaired at 100 ppm,⁶ and athletic performance declines as CO concentrations increase.⁷ The visual function is adversely affected by concentrations between 50 and 250 ppm.⁸ Measurable toxic effects on humans have been reported at as low as 10 ppm,⁹ and toxic effects in the cardiovascular system and central nervous system have been reported at high concentrations of CO.¹⁰ People with coronary heart disease or emphysema may be particularly susceptible to CO exposures.¹¹ Animal studies show that chronic exposure to relatively low concentrations of CO (15 ppm) hastens the process of arteriosclerosis.¹²

Little is known about toxic effects of NO_x. They may cause increased susceptibility to respiratory infections.¹³ There is evidence that nitrogen oxides can cause damage to lung tissue.¹⁴ Hydrocarbons, by themselves and in reaction products with NO_x, are not well understood in their effects on humans. Eye irritation and changes in pulmonary function have been associated with these substances.¹⁵ Most effects have been measured at very high concentrations, over 100 ppm. Hydrocarbons combine with other substances in the atmosphere to produce a variety of acids which can harm metal. However, effects on humans, even at concentrations found near busy highways, is not known. Other exhaust products cause damage. Ozone, lead, and asbestos are known to cause serious illness under some conditions. On the other hand, little is known about numerous other exhaust emission products.

5. Beard & Wertheim, *Behavioral Impairment Associated with Small Doses of Carbon Monoxide*, 57 AM. J. PUB. HEALTH 2012 (1967).

6. *Id.* at 524.

7. NATIONAL ACADEMY OF SCIENCE AND NATIONAL ACADEMY OF ENGINEERING, *EFFECTS OF CHRONIC EXPOSURE TO LOW LEVELS OF CARBON MONOXIDE* 55 (1969).

8. Beard & Grandstaff, *CO Exposure and Cerebral Function*, Paper presented to Conference on Biological Effects of Carbon Monoxide, New York Academy of Sciences, Jan. 12-14, 1970.

9. NATIONAL AIR POLLUTION CONTROL ADMINISTRATION, *AIR QUALITY CRITERIA FOR CARBON MONOXIDE* 10-6 (Dept. of HEW Pub. No. AP-62, 1970); Schulte, *Effects of Mild Carbon Monoxide Concentration*, 7 ARCHIVES OF ENVIRONMENTAL HEALTH 524-30 (1963).

10. *AIR QUALITY CRITERIA FOR CARBON MONOXIDE*, *supra* note 9, at 8-52.

11. *Id.* at 8-31.

12. Goldsmith, *Carbon Monoxide and Coronary Heart Disease*, 71 ANNALS OF INTERNAL MEDICINE 199-200 (1969).

13. Blair, *Chronic Toxicity of Nitrogen Dioxide*, 18 ARCHIVES ENVIRONMENTAL HEALTH 186 (1969).

14. Ehrlich & Henry, *Chronic Toxicity of Nitrogen Dioxide*, 17 ARCHIVES OF ENVIRONMENTAL HEALTH 860 (1968).

15. NATIONAL AIR POLLUTION CONTROL ADMINISTRATION, *AIR QUALITY CRITERIA FOR HYDROCARBONS* 7-19 to 7-26 (Dept. of HEW Pub. No. AP-64, 1970).

To admit ignorance of health effects is not to say that no effects exist. Extreme caution is required; medical science is continually discovering unsuspected hazards in air pollutants. Particularly where substances are known to cause damage in animals, or to vegetation, the lack of available data on humans cannot be interpreted as an "all clear" signal.

Concentrations

The average automobile in 1968 produced approximately 53 grams of CO per mile.¹⁶ Vehicle and speed variations produce individual deviations from the average. Mean CO concentrations of 15 ppm are typical on busy streets.¹⁷ Eight hour average concentrations of 40 ppm have been estimated for some off-street central urban areas, 75 ppm for the worst arterial streets, and 115 ppm for the worst city streets.¹⁸ Garages, tunnels, and loading docks tend to show higher concentrations.¹⁹ Nitrogen oxides have not been extensively measured. Levels of from one to three ppm are sometimes reached in polluted atmospheres.²⁰ Similarly, hydrocarbon concentrations rarely exceed one ppm.²¹

Use of Air Pollution Data in Highway Location and Design

Highway planners should have a complete record of the air pollution effects of a proposed road. In addition, they should be told what to do with the information. Under existing practice, the record on air pollution is never adequate; air pollution is rarely considered seriously; and, air pollution factors are given virtually no weight in decisionmaking.²²

16. AIR QUALITY CRITERIA FOR CARBON MONOXIDE, *supra* note 9, at 4-2.

17. Bove & Sieberberg, *Airborne Lead and Carbon Monoxide at 45th Street, New York City*, 167 SCIENCE 986 (1970).

18. AIR QUALITY CRITERIA FOR CARBON MONOXIDE, *supra* note 9, at 6-22.

19. *Id.* at 6-23.

20. AIR POLLUTION PRIMER, *supra* note 2, at 41.

21. AIR QUALITY CRITERIA FOR HYDROCARBONS, *supra* note 15, at 3-1 to 3-15.

22. Highways do not cause air pollution; they are places where pollutants concentrate. Although air pollution can be eliminated from a proposed highway corridor by eliminating the highway, cleansing vehicle emissions has the same effect. The propriety of relying on improved emission control technology, and therefore the relevance of this article, depends in substantial part on the likelihood that vehicle emissions will be eliminated within the foreseeable future. Current enforcement programs will not reduce vehicle air pollution in the long run. S. REP. NO. 64, 91st Cong., 2d Sess. 31 (1970). Standards are being tightened. Compare 45 C.F.R. § 85.21 (1969), with proposed amendments to § 85.21 in 35 Fed. Reg. 11339 (1970). New legislation with tough provisions has been passed by the Senate, and House conferees have tentatively agreed to the provisions. See S. 4358, 91st Cong., 2d Sess. (1970); S. REP. NO. 1196, 91st Cong., 2d Sess. 23-35 (1970). The chances for a "clean" automobile are extremely cloudy. Predictions range from very soon to very far away. See, e.g., Hearings on S. 3229, S. 3466, S. 3546 Before the Subcomm. on Air and Water Pollu-

An Adequate Record

The Federal-Aid Highway Act of 1968,²³ and the regulations under it,²⁴ set no standards for the minimum information on air pollution which must be assembled by a highway planner before approval of a project. The Act requires the state highway department to consider the "impact on the environment" of the proposed route.²⁵ Federal Highway Administration guidelines, set forth in Policy and Procedure Memorandum 20-8 (PPM 20-8), define the "environmental effects" to be considered to include: "Noise, and air and water pollution."²⁶

The only guidelines for assembling the facts which are to form the basis for consideration of air pollution are these:

Consideration of social, economic, and environmental effects shall include an analysis of information submitted to the State highway department in connection with public hearings or in response to the notice of the location or design for which a State highway department intends to request approval. It shall also include consideration of information developed by the State highway department or gained from other contacts with interested persons or groups.²⁷

PPM 20-8 also requires location study reports to contain

[d]escriptions of the alternatives considered and a discussion of the anticipated social, economic and environmental effects of the

tion of the Senate Committee on Public Works, 91st Cong., 2d Sess. 197 (1970); STAFF OF SENATE COMM. ON COMMERCE, 91st Cong., 1st Sess., REPORT ON THE SEARCH FOR A LOW-EMISSION VEHICLE (Comm. Print 1969); AMERICAN CHEMICAL SOCIETY, CLEANING OUR ENVIRONMENT: THE CHEMICAL BASIS FOR ACTION 46-56 (1969). "No significant reduction in automotive air pollution is expected to result in the next decade from the advent of vehicles with unconventional power sources." *Id.* at 56. Substantial amounts of research money are being devoted to the search for a cleaner automobile. *Hearings on S. 3229, supra* at 360-62. See also NAPCA Announces Incentive Program for Unconventional Power Sources, 1 ENVIRON. REPR. 282 (1970). When the uncertainty that alternative technology will be developed soon is combined with the problems of phasing out old vehicles even after new technology is available, and the problems of policing the efficacy of pollution control devices, the propriety of relying on emission control technology to solve urban highway air pollution problems is doubtful.

23. 23 U.S.C. §§ 101-511 (Supp. V, 1970).

24. 23 C.F.R. §§ 1.1-1.38 (1970).

25. 23 U.S.C. § 128(a) (Supp. V, 1970).

26. Policy and Procedure Memorandum 20-8, ¶ 1c(15), 23 C.F.R. ch. I, pt. 1, app. A (1970). Policy and Procedure Memoranda are statements by the Federal Highway Administration (FHWA), issued under 23 C.F.R. § 1.32 (1970) which provides: The Administrator shall promulgate and require the observance of such policies and procedures, and may take such other action as he may deem necessary for carrying out the provisions and purposes of the Federal Laws, the policies of the Federal Highway Administration, and the regulations in this part.

27. *Id.* § 9.

alternatives, pointing out the significant differences and the reasons supporting the proposed location or design.²⁸

Minimum standards are nowhere prescribed for the information needed to support required considerations of environmental effects.

Vague guidance produces vague results. One highway report submitted under PPM 20-8 disposed of the air pollution problem in the following way:

An expressway along any route will reduce per-car exhaust emissions by permitting faster and more efficient vehicle operation. Other methods of reducing air pollution impact on adjacent land use include the use of an elevated alignment or the provision of planted park strips along the edges of depressed alignments.²⁹

In the report and supporting materials no evidence appears of specific analysis of the impact of the proposed highway on air pollution at any particular adjacent location. Nor is there evidence of consideration of the impact on the total air pollution burden of the city or neighborhood.³⁰ We have found similar treatment of air pollution problems in the records on other urban freeways.³¹ Such cursory disposition of complicated air pollu-

28. *Id.* § 105(1).

29. CROSSTOWN ASSOCIATES, CHICAGO CROSSTOWN EXPRESSWAY—ROUTE LOCATION: MIDWAY/SKYWAY—ADDENDUM ON SOCIAL, ECONOMIC AND ENVIRONMENTAL EFFECTS 12 (1970). The letter transmitting this document states that "this material is designed to meet the requirements of paragraph 105 of PPM 20-3." Letter from Crosstown Associates to George T. March, Feb. 2, 1970.

30. Something more of the kind available to the highway officials responsible for the Chicago Crosstown Expressway can be seen in a letter from the local Commissioner of Public Works to a citizen seeking information about the air pollution effects of the proposed highway. He replied:

The question of air pollution has been investigated with the Department of Air Pollution Control. Generally speaking, research into air pollution and highways indicates that the amount of pollution produced by automobiles and trucks is less on limited access highways than on arterial or local streets. For example, hydrocarbons produced by the exhaust of automobiles on expressways are reduced by 25 to 50 per cent over arterial streets, and 50 to 160 per cent over local streets. This reduction is even more dramatic for carbon monoxide emissions. It should also be noted that the Motor Vehicle Air Pollution Control Act of 1965 required that all new automobiles be equipped with air pollution control devices which conform to standards set forth in this Act. As a result, the total volume of pollutant emissions will be reduced.

Letter from Milton Pikarsky to Citizen, July 20, 1968. Letters such as this are part of the public record maintained in the Division 10 office of the Illinois State Highway Department.

31. We did not make a careful sample. We inspected files covering urban freeways in several states. The treatment of air pollution found in the Chicago Crosstown report appeared everywhere. For example, in the District of Columbia, complaints about air pollution effects of proposed freeways were handled as follows:

Air pollution has been cited as a reason for not building freeways. The fact is this: We're going to continue having air pollution even if not a single mile of freeway is built. . . . Stopping freeway building would simply keep vehicles on surface streets where stops and starts make engines burn the dirtiest, in-

tion problems reflects an almost totally bankrupt record in the highway department. The rationale that higher freeway speeds actually reduce pollution is misleading and incomplete. It overlooks substantial risks of harm to human health and increases in pollution which may result from the freeway.

While it is true that automobiles travelling at high speeds emit less carbon monoxide and hydrocarbons per mile than vehicles travelling at lower speeds,³² emissions of oxides of nitrogen and of lead increase with higher speeds.³³ Furthermore, a new high speed corridor tends to generate entirely new automobile traffic entering the city, making up for some reduction in per-car emissions with more cars.³⁴ Even if a new road merely transfers existing traffic from other routes, air pollution effects are serious. The outputs of certain pollutants from a freeway may be less than the total accumulation of outputs from a large number of arterial streets; but, the freeway, as a single line source of concentrated pollutants exceeds the emissions from any one of the arterial streets. The implications for surrounding land use are clear. The situation is particularly alarming for joint and multiple use projects which are located over, under, and immediately adjacent to the freeway.

Critical facts such as these are repeatedly overlooked by highway planners, primarily because the information is never assembled. This performance is inconsistent with the congressional intent behind the urban impact amendment in the Federal-Aid Highway Act of 1963.³⁵ The purpose of the amendment was to "insure that proper consideration will be given to the needs of communities through which highways are to be constructed."³⁶ It grew out of extensive hearings, one premise of which was:

We must provide those who make the decisions with more accurate information regarding the effects on the local areas, on their neighborhoods, and their people.³⁷

stead of on higher speed freeways, where they burn the cleanest. . . . The way to reduce pollution produced by motor vehicles is by attacking the cause: the engine emissions.

D.C. DEPT. OF HIGHWAYS AND TRAFFIC, *RECOMMENDATIONS FOR A FREEWAY IN THE NORTHERN SECTION AND RELATED POLICY* 24 (1970). This District of Columbia report was not submitted under PPM 298.

32. See 3 *AIR POLLUTION*, *supra* note 1, at 57-60.

33. *Id.* at 60-61.

34. BUREAU OF PUBLIC ROADS, *HIGHWAY CAPACITY MANUAL* (1969).

35. Act of Aug. 23, 1963, Pub. L. No. 90-495, § 24, 82 Stat. 828, amending 23 U.S.C. § 128(a) (1964).

36. SENATE COMM. ON PUBLIC WORKS, *REPORT ON THE FEDERAL-AID HIGHWAY ACT OF 1963*, S. REP. NO. 1340, 90th Cong., 2d Sess. 28 (1968).

37. *Hearings on Urban Highway Planning, Location, and Design Before the Subcomm. on Roads of the Senate Comm. on Public Works*, 90th Cong., 2d Sess. 185 (1968) (hereinafter cited as *Senate Urban Highway Hearings*).

Methods exist for creating an adequate record on air pollution more consistent with congressional intent. On such a record, highway planners can decide intelligently whether and where to build the road. Reasonably sound measurements can be made of the amounts of pollutants produced by each automobile. Traffic estimates, required to be made by state highway departments seeking federal approval,³⁸ can then be used to estimate total pollution on the highway. Forecasts of altered traffic patterns can be used to estimate the total increase or decrease in pollution burden for the entire city, or broad regions within it. Mathematical tools, based on observations of the dispersion of pollutants from sources such as freeways, can be used to estimate pollution concentrations at any distance from the road.³⁹ The latest medical research can be consulted to determine the effects on human health of concentrations estimated in this way.

This sort of record should be made before any urban freeway is approved. It can be guaranteed if standards for the information to be assembled are included in the Federal Highway Administration's (FHWA) regulations in something like the following form:

State highway departments shall obtain and consider the following information in considering the air pollution effects of the proposed location:

- 1) Estimated future concentrations of each of the following substances measured at intervals of 50 feet horizontally and vertically from the center line of the proposed highway to a distance of 2500 feet from the center line:

38. See 23 U.S.C. § 102(b) (Supp. V, 1970); PPM 21-1 § 8b(3). See also Design of Public Roads Form PR-1.

39. See, e.g., AIR QUALITY CRITERIA FOR CARBON MONOXIDE, *supra* note 9, at 6-26 to 6-27; METEOROLOGY AND ATOMIC ENERGY (Atomic Energy Comm. Pub. No. TID-24190 1968); OTT, CLARKE & OZOLINS, CALCULATING FUTURE CARBON MONOXIDE EMISSIONS AND CONCENTRATIONS FROM URBAN TRAFFIC DATA (National Air Pollution Control Administration Pub. No. 992-AP-41 1967); D. TURNER, WORKBOOK OF ATMOSPHERIC DISPERSION ESTIMATES 40, 53 (Public Health Service Pub. No. 972-AP-26, 1967). The mathematical models described in these and similar sources account for the following factors: quantity of emissions, velocity of emissions at the source, turbulence of the atmosphere, and height of the source relative to the surrounding landscape. These methods have significant limitations. They fail to account for other nearby sources of pollution with the result that they frequently tend to underestimate true concentrations at given distances from the pollution source being measured. See AIR QUALITY CRITERIA FOR CARBON MONOXIDE, *supra* note 9, at 6-26 to 6-27, which notes that diffusion models usually predict CO concentrations one half to one tenth of those actually measured. Diffusion models also fail to account for the wide variations in urban landscape, including tall buildings. Even so, these mathematical tools provide enough information to be an improvement over a complete absence of information. See AMERICAN CHEMICAL SOCIETY, CLEANING OUR ENVIRONMENT: THE CHEMICAL BASIS FOR ACTION 44 (1969). "Diffusion" refers to the mixing of pollutants with surrounding air by means of random particle or molecular motion. "Dispersion" refers to transport of pollutants by atmospheric currents. Despite their technical distinction, these words are often used loosely and interchangeably.

- (a) carbon monoxide
- (b) oxidants
- (c) nitrogen oxides
- (d) hydrocarbons
- (e) asbestos
- (f) lead
- (g) particulate matter.

Such estimates shall be based on estimates of traffic contained in FHWA Form PR-1, and shall employ the method set forth for estimating diffusion from line sources in D. TURNER, WORKBOOK OF ATMOSPHERIC DISPERSION ESTIMATES (Public Health Service Pub. No. 999-AP-26 1967). Such estimates shall be made for the various climatic conditions prevailing in the area throughout the year on a 24-hour, 8-hour, and peak hour basis.

2) Existing concentrations of pollutants for each 50 foot interval shall be made for the proposed route of the highway. Such measurements shall be made under the various climatic conditions prevailing in the area throughout the year and shall be made on a 24-hour, 8-hour and peak hour basis.

3) Existing average concentrations and estimated concentrations after construction of the highway of each of the pollutants listed in section (1) for the metropolitan area as a whole and for each geographical sub-region of the metropolitan area through which the proposed highway will pass.

4) Existing land use in each 50 foot interval for which estimates and measurements are made under subsections (1) and (2) and land use shown on any official regional or metropolitan plan.

5) The most recent medical and scientific research of the effects upon humans, animals, vegetation, and property of the estimated concentrations of the substances at each 50 foot interval.⁴⁰

This method has been tried. Data of this sort was assembled in a limited way for hearings on the proposed Lower Manhattan Expressway in New York City.⁴¹ A simple dispersion model was used; meteorological effects were, for the most part, ignored.⁴² The following estimates were made for carbon monoxide concentrations on the assumption of 15,000 vehicles per hour:

40. In the absence of a regulation, this prescription serves as a model for the evidence which should be assembled for presentation at location hearings required by Section 128(a). A similar procedure should be followed for noise, producing estimates of perceived noise at 50 foot intervals from the proposed highway.

41. The study was conducted by the New York City Department of Air Resources.

42. Failure to consider meteorological factors was probably not fatal to the study's usefulness. The proposed road was to be in a sunken trench in which the movement of pollutants to adjacent areas most probably is dominated by true diffusion, rather than by wind and heat dispersion.

roadway surface	90 ppm
adjacent streets	60 ppm
covered roadway	300 ppm
streets adjacent to covered roadway	300 ppm

This sort of data is particularly critical for joint and multiple use projects. Each such project is, by definition, in close proximity to the freeway. Many of these projects have been planned and completed without a study of air pollution problems. Among the many joint use projects are the following: a medical center (over a road), a high school (adjacent), a public library (over), an exhibition and convention center (over), apartments (over), and office buildings (over and adjacent).⁴³

The Lower Manhattan Expressway study projected CO concentrations at the location of a proposed school over the roadway to be at least 60 ppm. A study after the fact of the George Washington Bridge Apartments, constructed over an interstate highway in New York City, shows carbon monoxide levels as high as 22 ppm inside third floor apartments, and 24 hour average concentrations of 14 ppm.⁴⁴ Similar levels were found in apartments on the 30th floor. These levels could have been predicted with an adequate study in advance of approval of the highway and the joint use air rights project.⁴⁵ Air pollution data such as this is plainly relevant. It is available to any highway planner who seeks it. He should be required to assemble this material and, if necessary, he should be explicitly instructed to think about the air pollution facts which are produced.⁴⁶

43. FEDERAL HIGHWAY ADMINISTRATION, *HIGHWAY JOINT DEVELOPMENT AND MULTIPLE USE* (1969). This publication contains a complete catalogue of joint development projects in connection with federal-aid highways in the United States.

44. NATIONAL CENTER FOR AIR POLLUTION CONTROL, *SPECIAL CO SURVEY*, (George Washington Bridge Apartments, New York City, July 3-14, 1967). It is ironic that joint use projects may create serious new urban freeway problems. The Senate Committee on Public Works is particularly fond of such projects as a solution to urban freeway problems. "We encourage the Department of Transportation, the Federal Highway Administration, and individual state highway departments to give continued strong support to this so-called 'joint development' concept." SENATE COMM. ON PUBLIC WORKS, *REPORT ON THE FEDERAL-AID HIGHWAY ACT OF 1968*, S. REP. NO. 1340, 90th Cong., 2d Sess. 8 (1963).

45. Noise pollution requires similar pre-study. "Schools neighboring busy airports and roadways in this country have reported severe disturbances in classroom activities from intruding noises from these transportation activities." *Hearings on S. 3229, S. 3466, S. 3546 Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works*, 91st Cong., 2d Sess. 203, 207 (1970) (Statement of Dr. Alexander Cohen, Chief, National Noise Study, Bureau of Occupational Health and Safety, Dept. of HEW).

46. Such well-tested devices as mandatory findings of fact encourage the decision-maker to process the information presented to him. See *FED. R. CRV. P.* 52(a). Shifting the burden of proof also works. If the proponent of a new road is required to prove the absence of air pollution effects, evidence of air pollution must be dealt with carefully. See *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 603 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966); *Texas E. Trans. Corp. v. Wildlife Pres.*

Weight of Air Pollution Factors

The importance of air pollution health hazards in highway decision-making is not prescribed in existing law. No threshold of unacceptability tells the planner when he must return to his drawing board and eliminate the hazardous effects. States are required only to "consider" air pollution; no standards dictate which highways cannot be built. The Secretary of Transportation is guided only by the National Environmental Policy Act of 1969.⁴⁷

In view of its potential for havoc in human health, air pollution arguably requires an absolute rule, barring a proposed highway until its harmful effects are eliminated. It is difficult to conceive of any benefits of the road which are sufficiently great to outweigh properly defined and adequately proved health hazards.⁴⁸ Under such a rule, where harm to human health caused by air pollution is clear, the road would have to be redesigned, relocated, or eliminated.

But most air pollution information is not totally clear and distinct. Health effects on humans at concentrations found near highways are shown in a relatively small proportion of the medical studies. Only recently have studies begun to appear which reveal effects upon humans at commonly encountered levels of concentration.⁴⁹ The result is that literature often

Inc., 48 N.J. 261, 225 A.2d 130 (1966); Tarlock, *Recent Natural Resource Cases*, 8 NATURAL RESOURCES J. 1, 5 (1965). See also H.R. REP. NO. 1125, 89th Cong., 2d Sess. (1964); Krier, *Environmental Litigation and the Burden of Proof: Some Comments and Suggestions*, Sept. 11-12, 1969 (paper given at Conservation Foundation Conference on Law and the Environment).

47. 42 U.S.C. §§ 4331-47 (Supp. V, 1970). DOT environmental policy statements on new interstate highways such as California's I-5 and I-80, required by Section 162(2)(C) of the Act, do not mention air pollution. Several contracts have been let by DOT to help it implement the Act, including a \$228,594 contract for assisting it in making its planning more responsive to environmental considerations. See 116 CONG. REC. S16,881-86 (daily ed. Oct. 1, 1970); 2 CLEAN AIR & WATER NEWS NO. 30 at 4 (1970). DOT considers the Act to be "the criterion for evaluating environmental and ecological considerations." *Id.*

48. This contrasts with congressional policy on disruption of parkland for highways. Section 138 of the Highway Act bars invasion of parks unless "there is no feasible and prudent alternative to the use of such land." 23 U.S.C. § 138 (Supp. V, 1970). Congress has stated that this section is not "a mandatory prohibition against the use of the enumerated lands, but, rather, is a discretionary authority which must be used with both wisdom and reason." CONFERENCE REPORT ON S. 3418, H.R. REP. NO. 1799, 90th Cong., 2d Sess. 32 (1968). Compare Michigan Environmental Protection Act of 1970, Enrolled House Bill No. 3055 § 3(1), with MICH. REV. STAT. ANN. tit. 38, § 484 (1964). "The commission shall approve a [commercial or industrial] development proposal whenever it finds that . . . the proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities." *Id.*

49. See, e.g., Hodgson, *Short-term Effects of Air Pollution on Mortality in New York City*, 4 ENVIRONMENTAL SCIENCE & TECHNOLOGY 586-89 (1970).

shows studies of effects on animals or humans at concentrations far higher than those to which humans are normally exposed. Extrapolations to human health hazards at normal highway concentrations are uncertain. Thus, the record before the state highway department, even if developed in accordance with the standards suggested above, will show a series of risks of varying intensity, and only a few clear instances of harm.⁵⁰

Commitment of evaluation of these uncertainties to administrative decision without guidelines fails to give adequate protection to what should be an important issue of public health. Not only is the administrator more or less free to ignore the risks, but reviewing courts have no usable standards for examining his action.⁵¹ Regulations should prescribe the quantum of proof necessary to require the proponent of the highway to change the project. Models for such regulations exist, covering the spectrum from a very high burden of proof to a very low one. Under the traditional tort rules for proving causation in a suit to abate a nuisance, the burden is comparatively high—proof of cause in fact by a preponderance of the evidence.⁵² Most highway air pollution proof may not rise to this rather high tort standard.

The uncertainty inherent in relying on medical studies of health hazards is accommodated in the food additive amendments to the Federal Food, Drug and Cosmetic Act, by establishing a very low burden of proof as the trigger to banning proposed action. The Act provides:

[N]o additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal.⁵³

50. The uncertainty of the evidence is further undermined by the imprecision of traffic estimates, pollution estimates, and diffusion models. See note 39 *supra*.

51. Courts will apply strict statutory standards if there are any. See, e.g., *Scientific Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966). The National Environmental Policy Act of 1969 may provide the statutory peg for judicial protection of the environment. However, explicit statutory protection is probably required. One lawyer suggests that the ninth amendment may provide judges with a basis for deciding cases in favor of environmental protection. Roberts, *An Environmental Lawyer Urges: Plead the Ninth Amendment*, NATURAL HISTORY, Aug.-Sept. 1970, at 18.

52. See W. PROSSER, *LAW OF TORTS* 245-47 (3d ed. 1964). The plaintiff "must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the result. A mere possibility of such is not enough." *Id.* at 247.

53. Food, Drug and Cosmetic Act § 409(c)(3)(A), 21 U.S.C. § 349(c)(3)(A) (Supp. V, 1970). Identical language appears in the Color Additive Amendment, Food, Drug and Cosmetic Act § 706(b)(5)(B), 21 U.S.C. § 376(b)(5)(B) (Supp. V, 1970). A similar standard is in effect under the pesticide provisions of the Act. Section 408 provides that "the Secretary may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Secretary does not justify the establishment of

Under this standard, food additives are banned even though the studies which show inducement of cancer involve laboratory situations which offer little basis for extrapolation to humans. This gap between evidence and administrative action is explicitly recognized by enforcement officials. In restricting cyclamates, one official said:

We can in no way at this time extrapolate the new data from rat experiments to human beings. Nevertheless, we in this Department—whether from a legal or from a scientific point of view—cannot afford to ignore any possibility of the rat data being applicable to human population. As long as this possibility exists, a prudent concern for the health of the public dictates that precautionary action be taken.⁵⁴

This enforcement philosophy has been upheld in court, where a food additive ban was upheld despite the fact that the amounts used by humans were relatively small.⁵⁵

The range between the tort standard's "cause in fact" and HEW's "possibility" test, offers many options for design of a regulation which provides explicit protection from new air pollution dangers caused by urban freeways. Given the nature of much of the medical evidence, however, any test requiring substantially more than a showing of a possibility of harm will offer relatively little protection.

Required Action

When the record shows an air pollution hazard with sufficient certainty to meet the applicable test, the highway planner must respond by changing his plans. He may have several options, although many of these may be freighted with such enormous social or economic costs that they are alternatives in theory only.

Elimination of the proposed road is required when no other device will avoid the air pollution hazard. This is most likely to occur when the new highway will encourage so much new traffic into the city that the total air

a greater tolerance." 21 U.S.C. § 345a(b) (Supp. V, 1970). The regulations under Section 403 provide that a zero tolerance may be established because:

- (a) A safe level of the pesticide chemical in the diet of two different species of warm-blooded animals has not been reliably determined.
- (b) The chemical is carcinogenic to or has other alarming physiological effects upon one or more of the species of the test animals used, when fed in the diet of such animals.

21 C.F.R. § 120.5 (1970).

54. Statement of Jesse L. Steinfeld, Deputy Assistant Secretary of Health, Education, and Welfare for Health and Scientific Affairs, Oct. 18, 1969. *But see* PAROSIA, *supra* note 52, indicating that under the tort standard "a mere possibility" is not enough.

55. *See* Bell v. Goddard, 366 F.2d 177 (7th Cir. 1956).

pollution burden in the city, or a region of it, will be increased. Even with reductions in per-car emissions that accompany higher freeway speeds for some pollutants, the offsetting effect of the increase in amounts of other pollutants and new traffic may produce a new hazard. It is a hazard which cannot be avoided easily by redesign or relocation.

Highway engineers claim that air pollution effects of urban freeways can be reduced substantially through the use of such devices as elevating the road and planting green belts around it.⁵⁶ Such solutions may create problems of their own. An elevated roadway is likely to be extremely offensive to the eye.⁵⁷

When air pollution dangers can be localized in particular adjacent properties, acquisition of these properties solves the health problem. The Highway Act provides, as it must, for acquisition of land within the path of the road.⁵⁸ Acquisition of land for other purposes, such as scenic enhancement of the road⁵⁹ and fringe parking,⁶⁰ is also authorized. Control of adjacent land is encouraged through incentive payments to bar billboards on nearby private land,⁶¹ and to screen and control junk yards.⁶² Relocation assistance is provided for a "displaced person" whose property is acquired "in whole or in part" for a highway.⁶³ But neither acquisition nor relocation is provided to persons faced with air pollution hazards as a result of the new road. It is one of the uncompensated non-construction costs of the highway.⁶⁴ Acquisition of adjacent properties exposed to new air pollution hazards would solve the problem. However, extending the sweep of land acquisition may cause social and economic disruption exceeding that which is already considered undesirable in urban freeway construction.⁶⁵ The result may be that the highway simply cannot be built because the costs are too high.

56. See, e.g., CHICAGO CROSSTOWN EXPRESSWAY, *supra* note 29, at 12.

57. The planners of the Chicago Crosstown Expressway, who suggest "an elevated alignment" as one method of reducing air pollution, *id.*, should be familiar with this problem. Part of the Crosstown was originally planned as an elevated alignment and was severely criticized as an eyesore "skidway."

58. 23 U.S.C. § 109(f) (Supp. V, 1970).

59. *Id.* § 319. See also PPM 21-17 (Feb. 18, 1966); PPM 21-4-6 (Jan. 24, 1966).

60. Act of Aug. 23, 1968, Pub. L. No. 90-495 § 11(a), 82 Stat. 820-21, amending 23 U.S.C. §§ 120-21 (1964).

61. 23 U.S.C. § 131(b) (Supp. V, 1970).

62. *Id.* § 136.

63. *Id.* §§ 501-11.

64. *Hearings on Urban Highway Planning, Location, and Design Before the Subcomm. on Roads of the Senate Comm. on Public Works*, 90th Cong., 1st & 2d Sess., pt. 2, at 313, 343, 352 (1968) (Report by Anthony Downs). Whether excessive air pollution constitutes a "taking" of land for constitutional purposes is beyond the scope of this article.

65. With respect to Section 138 of Title 23 which attempts to preserve parklands, Congress has said: "The Congress does not believe, for example, that substantial numbers of people should be required to move in order to preserve these lands." CONFERENCE REPORT ON S. 3418, H.R. REP. NO. 1799, 90th Cong., 2d Sess. 32 (1965).

Use of the completed highway can be controlled to meet pollution control standards. Access controls have been authorized on federally-financed highways, although for different reasons.⁶⁶ Limiting the number or type of vehicles using the highway will limit pollution. A toll, or special tax, to use the highway would provide an economic incentive to limit road use. Such a charge would also impose an appropriate assessment on the automobile owner for his use of the air to dispose of his engine combustion wastes. Finally, the highway might be restricted to vehicles complying with strict standards on emissions.⁶⁷

Conclusion

Ignorance of air pollution effects of proposed highways is common and inexcusable. Information which can form the basis for an intelligent estimate of the new risks to human health is available. On the basis of such information, highway planners should be required to eliminate hazards to health. While some area for dispute may exist as to how much proof is necessary to require redesign, relocation, or elimination of a road, the current practice of refusing to see the air pollution problem should stop.

66. See *Statement of Position of the Federal Highway Administration on the Reservation of Freeway Lanes for Buses*, INSTRUCTIONAL MEMORANDUM 21-13-67 (Aug. 1967); AMERICAN AUTOMOBILE MANUFACTURER'S ASS'N, *THE POTENTIAL FOR BUS RAPID TRANSIT* (1970).

67. Presumably such restrictions would not be illegal under the federal pre-emption of state emission control activity provided by 42 U.S.C. § 1857f-6a(a) (Supp. V, 1970). See Currie, *Motor Vehicle Air Pollution: State Authority and Federal Pre-emption*, 68 MICH. L. REV. 1083, 1096 (1970).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CAPITAL REGION CITIZENS COMMITTEE, et al.,	:	Civil Action
Plaintiffs,	:	File No.
	:	72-CV-254
-against-	:	
JOHN A. VOLPE, Secretary of Transportation	:	
of the United States, et al.,	:	<u>AFFIDAVIT</u>
Defendants.	:	

-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN LaBARCA, being duly sworn, deposes and says:

That he is a homeowner in the Town of Richmondville, in Schenectady County, New York, is co-chairman of The Richmondville Property Owners Committee, one of the plaintiffs herein, and is familiar with the facts of the within proceeding.

This affidavit is filed in opposition to the motions of defendants for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for other relief, with particular reference to plaintiffs' Third and Fourth Claims, with respect to protection of parklands and recreational areas, and the requirements of public hearing under the law.

Section 328 of Title 23 of the United States Code, relating to Highways, as amended by Public Law 90-495, Sec. 24, effective August 23, 1968 (82 Stat. 828), provides in part and insofar

as here applicable, as follows:

"§ 128. Public hearings

"(a) Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State highway department which submits plans for an Interstate System project shall certify to the Secretary that it has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. As amended Pub.L. 90-495, § 24, Aug. 23, 1968, 82 Stat. 828."

Policy and Procedure Memorandum 20-8, adopted by the Federal Highway Administration of the Department of Transportation in implementation of the foregoing Act of Congress (see 23 CFR, Sec. 1.38, Appendix A) provides, insofar as here applicable, as follows:

"POLICY AND PROCEDURE MEMORANDUM 20-8 - PUBLIC HEARINGS AND LOCATION APPROVAL

* * *

"1. Purpose. The purpose of this PPM is to ensure, to the maximum extent practicable, that highway locations and designs reflect and are consistent with Federal, State, and local goals and objectives. The rules, policies, and proce-

dures established by this PPM are intended to afford full opportunity for effective public participation in the consideration of highway location and design proposals by highway departments before submission to the Federal Highway Administration for approval. They provide a medium for free and open discussion and are designed to encourage early and amicable resolution of controversial issues that may arise.

"The PPM requires State highway departments to consider fully a wide range of factors in determining highway locations and highway designs. It provides for extensive coordination of proposals with public and private interests. In addition, it provides for a two-hearing procedure designed to give all interested persons an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of a proposal's development when the flexibility to respond to these views still exists.

"2. Authority. This PPM is issued under authority of the Federal-aid Highway Act, 23 U.S.C. 101 et seq., 128, 315; sections 2(a), 2(b)(2), and 9(e)(1) of the Department of Transportation Act, 49 U.S.C. 1651(a) and (a)(2), 1657(e)(1); 49 CFR § 1.4(c); and 23 CFR § 1.32.

"3. Applicability.

"a. This PPM applies to all Federal-aid highway projects.

* * *

"4. Definitions. As used in this PPM

"A. A 'corridor public hearing' is a public hearing that:

"(1) Is held before the route location is approved and before the State highway department is committed to a specific proposal;

"(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the need for, and the location of a Federal-aid highway; and

"(3) Provides a public forum that affords a full opportunity for presenting views on each of the proposed alternative highway locations, and the social, economic, and environmental effects of those alternate locations.

* * *

"6. Hearing requirements.

"a. Both a corridor public hearing and a design public hearing must be held, or an opportunity afforded for those hearings, with respect to each Federal-aid highway project that:

"(1) Is on a new location; or

"(2) Would have a substantially different social, economic or environmental effect; or

"(3) Would essentially change the layout or function of connecting roads or streets.

* * *

"7. Opportunity for public hearings.

"a. A State may satisfy the requirements for a public hearing by (1) holding a public hearing, or (2) publishing two notices of opportunity for public hearing and holding a public hearing if any written requests for such a hearing are received. The procedure for requesting a public hearing

shall be explained in the notice. The deadline for submission of such a request may not be less than 21 days after the date of publication of the first notice of opportunity for public hearing, and no less than 14 days after the date of publication of the second notice of opportunity for public hearing.

"b. A copy of the notice of opportunity for public hearing shall be furnished to the division engineer at time of publication. If no requests are received in response to a notice within the time specified for the submission of those requests, the State highway department shall certify that fact to the division engineer.

"c. The opportunity for another public hearing shall be afforded in any case where proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect.

"d. The opportunity for a public hearing shall be afforded in each case in which either the State highway department or the division engineer is in doubt as to whether a public hearing is required."

★ ★ ★

With regard to the procedure followed by the State of New York in connection with the instant Federal-aid project, it appears (Affid. of Memmott, p. 24) that one of the segments, identified as "FARC 66-149" (ibid.) is built and open to traffic. According to Exhibit 6 attached to the Affidavit of Kirby, construction was started on this segment in 1966, and completed in November 1969, apparently by the State itself and antedating in

large part Federal participation.

Another relatively small section, in the City of Oneonta itself, had likewise been undertaken by the State (PIN 93 and PIN 9357.19; Affid. of Mennott, Paras. 5, 6, pp. 11-12, 24; Affid. of Kirby, Exh. 6) largely in advance of Federal approval of the rest of I-88.

With the exception of these two relatively small segments, which the State apparently has undertaken on its own responsibility, but with the expectation, at least in the case of the Oneonta segment, of Federal funding if the entire project is approved, the balance of the various segments appear to have been subject, in full, to the Federal two-hearings procedure referred to above (pp. 1-5).

In reviewing the procedures followed by the State of New York in connection with the Federal hearings, it is noteworthy that New York State has relied extensively, in at least five of the remaining segments, on the voluntary withdrawal of requests for hearing as satisfying Federal hearing requirements under PPM-20, apparently with the concurrence of the local Federal officials involved. It should be noted that this procedure is not specifically referred in Paragraph 7 of PPM 20-8 (pp. 4-5, above), which provides that "A State may satisfy the requirements for a public hearing by (1) holding a public hearing, or (2) publishing two notices of opportunity for public hearing and holding a public hearing if any written requests for such a hearing are received." In the absence of overreaching, or abuse of these procedures by the State in nullifying the purpose of the Federal policy "to afford full opportunity for effective public participation in

the consideration of highway location and design proposals" (PPM 20-8, para. 1), it would appear that voluntary withdrawal of a request for a hearing on the part of an individual would be effective, as the State contends, to satisfy the Federal hearing requirements; that is, unless such requests, under Paragraph 1 of PPM 20-8, are affected with that degree of public interest which would militate against individual cessation of the public hearing procedure process, once set in motion. The availability to the State, in such a situation, of avoiding a public hearing by an individual appeal to the person requesting it is perhaps too tempting to those minor highway officials charged with securing public acceptance of, or at least resignation to, a project; this may have been one reason why such an alternative was not offered, in specific terms, to State highway departments by paragraph 7 of Policy and Procedure Memorandum 20-8, above.

In any event, we do not reach the problem of whether an individual, having requested a public hearing under PPM 20-8, subsequently and of his own volition desires to withdraw that request, that is, without the intercession of Federal or State officials actively seeking that he do so.

It would appear, on the basis of the record before the Court, that there has in fact been overreaching on the part of the State of New York and, through a pattern of similar withdrawal requests, an indication of actions on the part of State highway officials that are inconsistent with the policy and purpose of the Federal public hearing procedures guaranteeing full opportunity for effective public participation in the consideration of highway location and design proposals.

This, in a sense, may represent no more than the officials' judgment that the highway building program of the State is more important than Federal policy with regard to full public participation in such decisions; even so, such a local determination is unacceptable if, in fact, it does result in a lessening of public rights in such matters, and in the frustration of Federal policies with regard to full public participation.

In the record before the Court, in at least a majority of the particular segments into which the project was broken, and in which the Federal dual hearings were required, this withdrawal procedure appears to have been used by the State, in either one or the other of the two hearings and with the apparent concurrence of local Federal officials, in order to avoid compliance with Federal hearing requirements. These are as follows (Memmott Affid., p. 24), insofar as here applicable:

"PIN

"9357.18

"Two requests rec'd but withdrawn.
No hearing req'd (85) * * *

(9357.02
.03)

"One request rec'd but withdrawn.
No hearing required (99)

(9357.04
.05)

"Several requests rec'd but withdrawn. No hearing required (101)

(9357.06
.07)

"Two requests rec'd but withdrawn.
No hearing required (103)

"9357.08

"One request rec'd but withdrawn.
No hearing required (88)" * * *

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In order to examine more particularly the implications of this record, and the extent to which the State of New York has failed to comply with governing Federal hearing procedures in the implementation of the instant proposed Federal-aid project, the circumstances will be more particularly examined with regard to the last-designated segment (PIN 9357.08-17). This relates to Item "7" of the Affidavit of Mammott (pp. 12-13) and comprises that portion of the project from County Road 47 to the Schoharie-Schenectady County Line, in Otsego and Schoharie counties. This is the area in which is located the Village and Town of Richmondville, in which affiant resides and is a property owner.

On September 3, 1969, a notice of opportunity for a corridor public hearing appeared in the Cobleskill Times-Journal (Exh. 1, attached), and apparently in other local papers around that time (Affid. of Mammott, p. 24; Exh. 40, p. 1; Affid. of Kirby, Exh. 16).

In response, a request for a corridor public hearing was made by Oscar E. Hendrickson, of the Greenlawn Farm, R.F.D. 1, Richmondville on September 15, 1969 (Kirby Affidavit, Exh. 17). This was addressed to the District Planning Engineer in Binghamton; in view of the difficult legibility of the copy of the letter in the record, the text is set forth here:

"Concerning the proposed new highway - Interstate Route 88, the latest map of the location thru the County, I did see was at a hearing sometime ago in Warnerville, N.Y. In relation to my Farm I then noticed the proposed route would take up, and cut-off without access to, most of the fertile valley crop acreage. From the buildings it would cutoff access to all the pasturage, woodland including two hillsides we reforested some time ago, and also loss to enjoy a large pond we had built some years ago.

"The Farm here has been fifty years in the Family, it is in the township of Richmondville and east of the Village

about two miles. It extends south of Highway 7 all of 1-1/2 miles. I've enclosed an Aerial View of the Farmstead and how I landscaped the grounds over the years, for beauty and protection, adds to bird life as well! The proposed location of the Route 88 Expressway as I understand it, would just about ruin my Farm. If it could be extended somewhat more south thru the lower hillside pasturage-there would be access to some pasturage and all of the valley cropland, also to the near acre size pond. I would desire a public hearing for possible change of location.

"What further puzzles me, if the Plan still is for the Expressway to come into on the west and close in on north-side of the Village of RICHMONDVILLE, why it would with the traffic noise and the motors to add to AIR pollution-that Automobile exhaust is by far the greatest polluter. I've understood such Highways-whenever possible, keep clear of centers of population, that also to preserve valuable farm land and for the very reason our Governor appointed a Commission to look into such situations. Still, I haven't heard or seen anyone of the Commission around here pertaining to the route of the Expressway. It would seem to me to avoid injury of the ENVIRONMENTAL QUALITY of the Village of Richmondville, and to some the best farm land in the area, if the new Highway as it enters the County or just east of East Worcester, be routed thru what is known as BROOKER HOLLOW.

* * *

Yours Sincerely
/s/Oscar E. Hendrickson"

At this point, under Paragraph 7.a of Policy and Procedure Memorandum 20-8, the responsibility of the State of New York appears to have been clear: Schedule a Corridor Public Hearing under Federal law.

Such, however, was not to be the case. Instead, an administrative decision was made at the State level, and apparently concurred in result by lower Federal officials, to send a letter to Mr. Hendrickson asking to confer with him with regard to the corridors and the public hearing. This letter is not, to affiant's knowledge, set forth in the Federal or State exhibits, and is attached hereto as Exhibit 2. This correspondence apparently followed a telephone call from the District Planning Engineer, and was implemented by a meeting after October 7th at which the

State highway officials came to Mr. Hendrickson's home to discuss these matters with him.

On information and belief, the issues raised in the letter of Oscar Hendrickson, dated September 15, 1969, requesting a Corridor Public Hearing under Federal law, aside from relating to his private interests, involved questions of public importance in the Town and Village of Richmondville in connection with the planning of the new highway, and the failure of the State of New York to have held a Corridor Public Hearing, as requested, rather than seeking to negotiate directly with the person requesting the hearing, as they did, was contrary to the purposes and procedures of PPM 20-8 and Section 128 of Title 23 of the United States Code (82 Stat. 828) relating to public hearings.

As mentioned in the letter of D. C. Sergeant (Exhibit 2, attached), at the time of the original notice for a corridor public hearing and before the meeting of the officials with Mr. Hendrickson, the State had proposed "two corridors (or bands) of varying width, one on each side of the Delaware and Hudson Railroad" (ibid.) It was noted, in that letter, that "A small-scale map showing these general corridor locations can be seen at the office of the Department's Resident Engineer at Cobleskill." (ibid.)

On information and belief, based upon information from Mr. Hendrickson himself, the State officials came to Mr. Hendrickson's farm in the week after October 7, 1969. As Mr. Hendrickson understood them, upon his rendering of a withdrawal of his request for a public hearing, there would be additional publication

for public hearings with regard to certain alternative corridor locations, and as suggested in Mr. Hendrickson's letter.

On the basis of these representations by the State and of this agreement, as reported by Mr. Hendrickson, a letter was written by Mr. Hendrickson on November 3, 1969, withdrawing his request for a public hearing. (Kirby Affidavit, Exh. 18).

The foregoing should be compared with the certification, by the State of New York, of compliance with Federal hearing procedures (Memmott Affid., Exh. 40, p. 2) in the following terms:

"As a result, one request for a public hearing was received. The request was subsequently withdrawn after representatives of the Department's Regional Office met with the persons involved to provide information relative to the alternate locations being considered. A copy of the request and withdrawal letter is attached." * * *

Whether the State's version of what happened at this private meeting is true; or whether, as affiant believes, representations were made by State officials with reference to further action regarding consideration of new corridors, is, in fact, immaterial; the vice of the State's action, under Federal law and regulations, lay in undertaking the official initiative, through the correspondence and otherwise, to negotiate directly with the person requesting the hearing, rather than at that point scheduling the public hearing as required by law.

It is not, in this case, the bargaining between equals over a private matter; the request for a public hearing, in and of itself, raises a public issue that is capable of issue only

in the light of full public attention, and the State's initiative, in the instant situation, to forestall a public hearing can only be regarded as an abuse, heretofore not passed on by the courts, of Section 128 of Title 23 of the United States Code, relating to public hearings, and of the Federal policies and procedures adopted in implementation thereof (PPM 20-8, Para. 7).

In any event, after the State of New York thus, through direct negotiation with the requesting party, finessed a corridor public hearing with regard to this particular segment (PINS 9357.08-17), it was not until some time late in 1970 that the State announced publicly that any change had been made in the proposed locations of the highway in this area. This was in the form of a letter, upon inquiry, to affiant, dated November 24, 1970, showing that the State was now proposing four corridors, "A-1", "A-2" (as originally), as well as two more new ones, "A-3" (South Hill) and "A-4" (Brooker Hollow). A copy of the letter and map from the State, showing the changed proposed locations, are attached as Exhibits "3" and "3-A", respectively.

No public hearing was scheduled by the State of New York in connection with the changes in proposed location of the new highway.

Thereafter, in the absence of State action to schedule and hold a corridor public hearing to the changed proposed locations of the alternate corridors, formal request on March 26, 1971 was made of the New York State Department of Transportation for a corridor public hearing by the plaintiff, The Richmondville Property Owners Committee. A copy of the letter requesting the corridor public hearing on the changed alternates, along with a

form of petition that, in part, accompanied the formal request, are attached as Exhibits "4" and "4-A".

In the letter requesting a corridor public hearing on the changed corridor location alternates, specific analysis was made of the factors with regard to the substantially different social, economic, and environmental effects of the various alternates to be considered.

This request was rejected by the State of New York on April 1, 1971. Exhibit 5, attached.

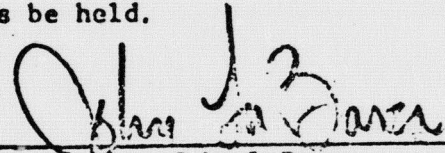
Further correspondence, on April 26, 1971, from plaintiff Committee (Exhibit 6, attached), apparently was not answered; the State, by a legal notice dated July 14, 1971 (Exhibit 7, attached), announced that it had chosen Corridor "A-2", one of the two original corridors.

A subsequent letter to the New York State Department of Transportation, at the Binghamton office, does not appear to have been acknowledged or answered (Exhibit 8, attached). A final exchange of correspondence with Mr. Bartelsmeyer of the Federal Highway Administration (Exhibits 9 and 10, attached) concluded with the helpful wisdom from one of Mr. Bartelsmeyer's subordinates that those concerned "again contact officials at the New York State Department of Transportation and present your views." (Exhibit 10)

In conclusion, on the basis of the foregoing and the state of the record, it appears that the State of New York, with the apparent approval of lower Federal officials, has followed a procedure with regard to the negotiated withdrawals of requests

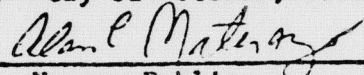
for public hearing that run counter to the purpose of 23 U.S.C. Section 128, with reference to public hearings, and of PPM 20-8, Para. 7, in implementation thereof. The parallels between what has happened in the instant segment and what appears to have happened in at least four other segments of the proposed highway, in terms of withdrawn requests for hearing, gives reason to believe that similar illegal procedures have been followed by the State with regard to other parts of the project, and raises issues of fact with respect thereto under the complaint.

Furthermore, the failure of the State to afford the opportunity for another public hearing in any case where locations are so changed from those presented in the notices or at a public hearing as to have a substantially different social, economic, and environmental effect, and the failure of the State highway department and the division engineer to resolve the doubt, under the circumstances, in favor of a public hearing, are further to be considered with respect to the allegation that original hearings have not been held as required under Federal law, and that the State of New York has ignored or evaded the requirement of Federal law that such hearings be held.


 John LaBarca

Sworn to before me this

24th day of October, 1972.


 Notary Public

ALAN P. MATARAZZO
 Notary Public, New York
 No. 51111
 County of Westchester
 Commission Expires March 20, 1974



STATE OF NEW YORK

J BURCH McMORRAN
COMMISSIONER

DEPARTMENT OF TRANSPORTATION

JOHN K MLADINOV
ASSISTANT COMMISSIONER
PLANNING AND DEVELOPMENT

ADDRESS REPLY:

71 Frederick Street
Singhamton, New York 11901

October 3, 1967

Re: Interstate Route 89
(Susquehanna Expressway)
Corridor Public HearingMr. Oscar E. Hendrickson
Greenlawn Farm-R. D. #1
Richmondville, New York 12147

Dear Mr. Hendrickson:

Thank you for your letter of September 15 in regard to proposed Interstate Route 89 (Susquehanna Expressway) in the vicinity of your farm two miles east of Richmondville.

Since you attended an informational meeting on the Susquehanna Expressway, held at Waverlyville some time ago, you are aware that there has already been a considerable amount of State-local government coordination in connection with this project. Presumably you also have seen the "Notice of Opportunity for a Corridor Public Hearing" which appeared twice in your local (Worcester and Cobleskill) newspapers in early September. This opportunity for a corridor public hearing was given in accordance with Federal regulations covering projects for which Federal-aid funds will be used.

The purpose of a corridor public hearing is to inform interested persons or agencies of the alternative corridor locations proposed by the Department and to give the general public an opportunity to express their views on these alternatives. For Interstate Route 89 in the Richmondville-Cobleskill area the Department is proposing two corridors (or bands) of varying width, one on each side of the Delaware and Hudson Railroad. A small-scale map showing these general corridor locations can be seen at the office of the Department's Resident Engineer at Cobleskill. A corridor public hearing would be held in order to receive the views of those present and others who may wish to submit statements. No recommendations as to a general corridor location will have been developed by the time of the hearing. Such recommendations will be developed only after consideration of all material, comments and statements furnished by interested persons and public advisory groups, and also by local governmental and other "contact agencies" who will have received and reviewed a project information report on

BEST COPY AVAILABLE

October 3, 1969
Page 2
Mr. Oscar L. Hendrickson

on Interstate Route 28 prepared by the Department.

Information relative to specific highway alignments within a recommended corridor will not be presented until the project has advanced to design status. A notice of an opportunity for a design public hearing for Interstate Route 88 in your area will be published at a later date, possibly within the next year. At that time your views in regard to selection of a specific highway alignment would be appropriate for inclusion in the official record of the design public hearing, if one is requested. Your views and comments, together with those of other interested persons, groups and contact agencies, would then be given due consideration by the Department in developing its alignment recommendations.

Thank you for the interest which you have expressed in Interstate Route 88. As discussed in our telephone conversation of this date, we will be pleased to have representatives of this office meet with you on October 7 at your home to provide further information in regard to the corridors which are being proposed for this Route.

Very truly yours,

D. T. Seargent

D. T. SEARGENT
Dist. Planning Engineer

WJS/men

cc: Mr. J. K. Mladinov
Mr. J. C. Frederick

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION

71 Frederick Street, Binghamton, New York 13902



November 24, 1970

Mr. John LaBarca
234 East 32nd Street
New York, New York 10016

Dear Mr. LaBarca:

Re: Proposed Interstate Route I-88 in the
vicinity of Richmondville, Schoharie County

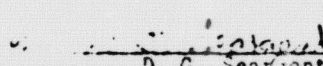
This is in reply to your letter of November 16, 1970 requesting information on proposed Interstate Route I-88 in the Richmondville area.

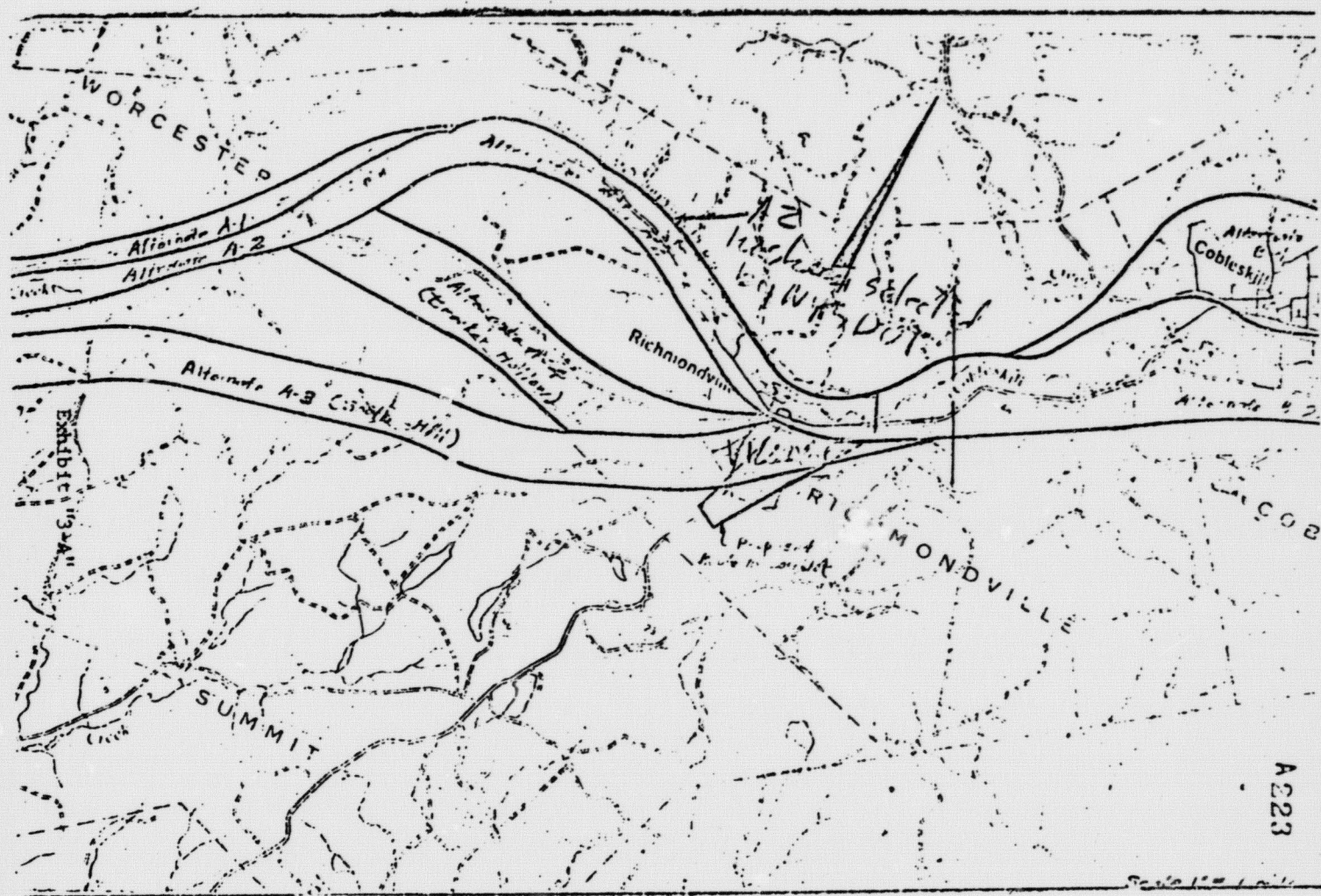
In 1968 the State of New York applied for Interstate designation for a route in the general vicinity of Route 7, in recognition of a need to provide direct interregional access between Binghamton, the Capital District and New England. The Federal Government approved the addition of this route (which had been previously designated by the State Legislature as the "Susquehanna Expressway") to the Interstate System and established its northeastern terminus at Route I-890 in the vicinity of Schenectady.

This Department is now preparing a location recommendation for the portion of Route I-88 from Oneonta northeasterly, through Schoharie County. Since there were no requests for a corridor public hearing, the recommendation will be based upon the results of our studies and the opinions of local officials and interested citizens who have written to us. The location recommendation will be published in local newspapers, probably within the next two months. Once a general location is approved by the Federal Highway Administration, alignment alternatives will be prepared and presented at a design public hearing, if one is requested.

Enclosed is a small-scale print showing the general alternate locations, or bands, which are being studied for Route I-88 in the vicinity of Richmondville. We regret that more detailed information will not be available until approval of a general location is received and preliminary design of the highway alignment alternatives is begun.

Very truly yours,

W. C. FEDERICK
Regional Dir. of Transportation
D. G. Seaberg
Regional Planning EngineerDCS/nea
Enc.



A 223

March 26, 1971

234 East 32nd Street
New York, N. Y. 10016

Mr. Joseph C. Federick
Regional Director of Transportation
New York State Department of Transportation
71 Frederick Street
Binghamton, New York 13902

RE: Proposed Interstate Route 1 - 88 in the Vicinity of Richmondville, Schoharie County

Dear Mr. Federick:

The Richmondville Property Owners Committee has been formed as a result of a growing awareness of the effects that the proposed Interstate Route 1-88 will have on the Richmondville area. This proposed highway will be the most important new construction to occur in this area. It will have a far reaching and indelible influence on the development of all of the regions through which it passes.

Since the inception of the proposed highway, there has been a general lack of interest and activity regarding the project on the part of the residents and property owners in Richmondville because of the lack of distribution of official information about the highway's possible locations. The Richmondville Comprehensive Planning Report, prepared by Metcalf & Eddy, engineers, was presented to the public on March 17th and 18th, 1971. This report gave the people, for the first time, a thorough analysis of the character and structure of their community. The report also showed the people one possible location of Route 1 - 88 through the Town of Richmondville. The possibility of this particular alignment becoming a reality has caused a great deal of concern. Had the information contained in this report been available to the people in September 1970, before the Highway Department advertised for requests for a corridor public hearing, then there would surely have been a large response. Since no information of this sort was available at that time, no requests for a hearing were made.

Through our analysis of the planning report, our discussions with local public officials, and our discussions among ourselves, it has become clear to us that the

new highway must not be placed in corridor alternates A-1 or A-2. Our reasons for the conclusion are:

1. The following public facilities would be destroyed or adversely affected:
 - a. the Richmondville Central School, playground and playfield
 - b. the two village reservoirs
 - c. the village water treatment plant
 - d. the village sewage treatment plant
 - e. the village garage
 - f. the village park and public swimming pool
(the only public recreation area in Richmondville)
 - g. Papermill Pond (the duck pond, "near the park and the only pond in the village)
 - h. Papermill Historic Site
 - i. Old Gristmill Historic Site
(Both of the historic sites are recognized by the N. Y. State Historical Society)
2. The following industrial facilities would be destroyed or adversely affected:
 - a. Glove factory
 - b. Plastics company
 - c. Safety ladder company
(the above items comprise 3 out of 4 facilities of the total village industry)
 - d. Farm properties in Cobleskill Creek Valley
(the best farmland due to soil and topographical characteristics)
3. The following conservation interests would be adversely affected:
 - a. Cobleskill Creek and feeder streams
 - b. Watershed Area in West Richmondville
(supplying the village reservoirs)
 - c. Farmland as mentioned above
 - d. Ponds and reservoirs as mentioned above
 - e. Village park as mentioned above
4. The A-1 and A-2 corridors follow the alignment of state Route 7, and therefore destroy or effect the greatest possible number of private homes in Richmondville.
5. The A-1 and A-2 corridors, by following state Route 7, interfere with and may disrupt the secondary arterial roads, many collector roads and many minor roads.

We have carefully studied the area map indicating the various corridor proposals that you provided us. Corridors A-3 and A-4 seem to present to our area none of the problems of corridors A-1 and A-2.

1. No public facilities need be affected.
2. No industrial facilities need be affected.
3. Conservation interests need not be adversely affected.
4. Corridors A-3 and A-4 pass through areas of the lowest density of private homes.
5. There is far less interference with existing roads.

Furthermore, corridors A-3 and A-4 present the possibility of a truly scenic route through the Richmondville area. A scenic route is made possible here because corridors A-3 and A-4 pass through undeveloped areas of great natural beauty, and because they bypass the Catskill Creek Valley, many vistas of the valley are offered.

Because we feel so strongly about the inadequacy of Alternates A-1 and A-2, we request that they no longer be considered as possibilities.

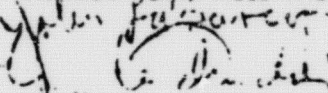
We are enclosing a statement showing disapproval of Alternates A-1 and A-2 with signatures of local residents and property owners. More signatures are being collected at present; they will be forwarded to you as we receive them.

You have indicated that the selection of the corridor is imminent. If corridors A-1 and A-2 are still being considered by your department, then we request a public hearing on the corridor selection before the decision is made. In this way, the people of the area may participate in the decision.

We await your response.

Yours truly,

THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE


John LaBarca, co-chairman
Guy Teschmacher, co-chairman

Enc:

cbj

cc: Governor Nelson A. Rockefeller
U. S. Senator James L. Buckley
U. S. Senator Jacob K. Javits
U. S. Representative Hamilton Fish Jr.
State Senator Walter B. Langley
State Assemblyman Edwyn E. Mason
Secretary John Anthony Volpe, U. S. Department of Transportation
Gerald Love, Federal Highway Administration
Robert E. Kirby, U. S. Department of Transportation
Commissioner Theodore W. Parker, N. Y. State Department of Transportation
Secretary Roger Morton, U. S. Department of the Interior
Secretary Clifford M. Hardin, U. S. Department of Agriculture
Commissioner Henry L. Diamond, N. Y. State Department of Environmental
Conservation
Dr. James Haslin, Director of N. Y. Historical Society
Francis L. Zaik, Schoharie County Soil and Water Conservation
Max Rua, Co-operative Extension Association of Schoharie County
Mayor George Davis, Richmondville
Royal Coons, Richmondville Town Supervisor
Richard Taccogna, Co-chairman, Richmondville Town Planning Board
Leon Butler, Co-chairman, Richmondville Town Planning Board
Howard V. Prenzel, Chairman, Richmondville Village Planning Board
Superintendent Harold Edts, Richmondville Highway Department
Schoharie County Promotion Department
Schoharie County Planning Commission
Jean Ryder Mohar, Editor, The Times - Journal, Cobleskill

As a property owner in the Richmondville area I am sure you are as concerned as we are about the proposed Interstate Highway I-88 in the vicinity of Richmondville.

Present plans call for four alternate locations of the highway in our area: A-1, A-2, A-3 and A-4. As you can see from the enclosed map, Alternates A-1 and A-2 place the highway on or very near our properties.

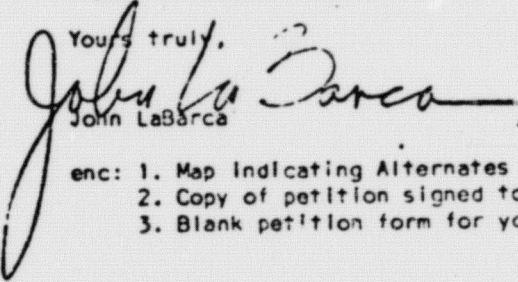
If you are concerned about the location of this highway, and agree with our petition, please sign the blank copy and return it to:

John LaBarca
234 East 32nd Street
New York, N. Y. 10016

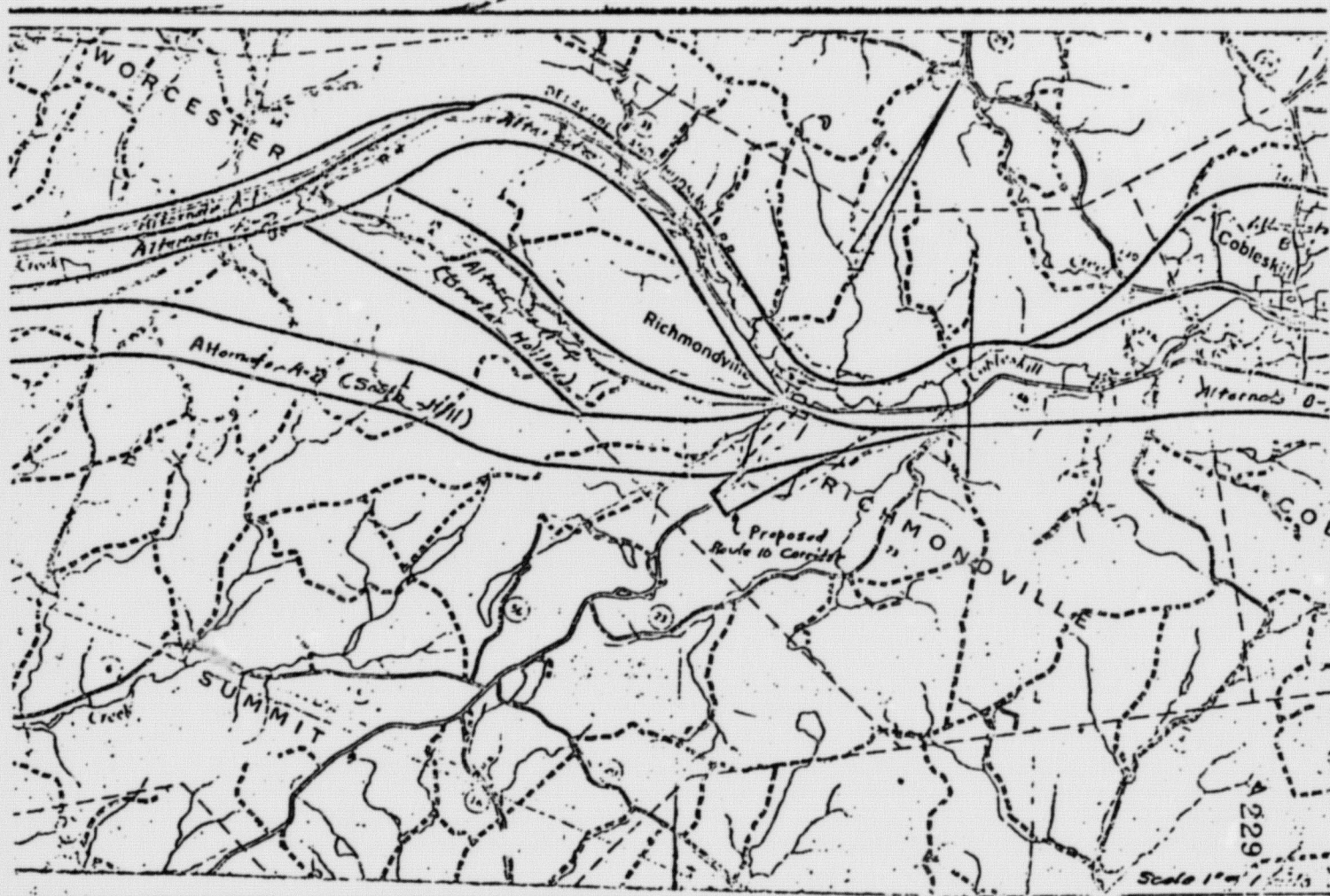
This petition will soon be sent to the Department of Transportation in the hope that it will have some influence.

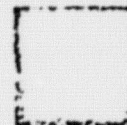
We have recently formed a committee of Richmondville property owners and are gathering all the information we can about the highway proposal. If you are interested in joining us or in getting more information we will be happy to have you contact us.

Yours truly,


John LaBarca

- enc: 1. Map indicating Alternates
2. Copy of petition signed to date
3. Blank petition form for your signature



NEW YORK STATE
DEPARTMENT OF TRANSPORTATION

Region 2 Office: 71 Frederick Street, Binghamton, New York 13902

April 1, 1971

Mr. John LaBarca
234 East 32nd Street
New York, New York 10016

Dear Mr. LaBarca:

RE: Interstate Route 508 (I-88)
Richmondville Area
Schoharie County

This will acknowledge receipt of your letter of March 26, 1971 to which was attached a copy of a petition bearing the names of 19 individuals.

In reviewing our past correspondence with you I find that your initial contact with this office was on November 16, 1970 in which you requested information concerning the proposed Interstate in the area of Richmondville. Following our reply you once again wrote this office on December 2, 1970 in which you indicated that since you only recently acquired property in the area, you were interested in more information about the new proposed highway facility. All information available at that time was also supplied you.

Since your ownership of property in the area has been that recent I can understand your feeling that there has been a lack of distribution of official information about the project. However, my feeling that the area residents have not been informed is doubtful because during the corridor study phase of this project a number of meetings were held in the area. The following was the schedule of the meeting dates with public officials and area residents:

Town Board and Planning Board of Worcester	April 24, 1969
Town of Worcester Public Informational Meeting (140 people)	May 6, 1969
Town and Village Boards of Richmondville and their Planning Boards	April 29, 1969 & May 8, 1969
Town and Village of Richmondville Public Informational Meeting	May 12, 1969 &
June 26, 1969 at which a total of 295 area residents were present	
Towns & Villages of Richmondville & Cobleskill Boards & Cobleskill College Officials	May 12, 1969
Richmondville & Cobleskill Farm Group	June 4, 1969 & June 11, 1969

Mr. John LaBarca
Sheet 2
April 1, 1971

The above noted meetings indicate that this office attempted to keep the local government officials and the area residents informed of the planning developments for this interstate route.

Local newspaper coverage also carried stories about the public informational meetings.

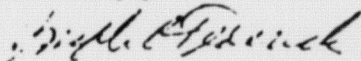
Subsequent to the above meetings opportunities for a corridor public hearing were published on September 4 and 11, 1969 in the Oneonta Star and the Times and Schenectady Monitor, while the Times Journal (Cobleskill) published such a notice on September 3 and 10, 1969. The deadline date for receiving such hearing requests was September 29, 1969. Since only one request for a hearing was received and later withdrawn it was concluded that a public corridor hearing would not be necessary.

In your letter you listed considerable culture that you believed would be affected by the various corridors under consideration. The map which you used as reference in your listing of the culture is at a scale of 1" = 1 mile. Since the corridor bands vary in width from between 1/2 mile to 3/4 of a mile it is conceivable that you feel that everything within the corridor bands would be affected. However, before any corridor was considered as feasible, at least one or two trial highway alignments were studied within such a corridor band. Therefore, much of the culture you mentioned as being located within such a corridor will not be affected when one considers the trial alignment studies that were made prior to the establishment of the various corridors.

As noted in our last letter to you and still at present, no definite corridor has been approved.

Thank you for your letter and your expressed keen interest in the proposed project.

Sincerely yours,



JOSEPH C. FEDERICK
Regional Director of Transportation

EAP:gmb

cc: F. J. Beach

234 East 32nd Street
New York, N. Y. 10016

April 26, 1971

Mr. Joseph C. Federick
Regional Director of Transportation
New York State Department of Transportation
71 Frederick Street
Binghamton, New York 13902

RE: Proposed Interstate Route 1-28 in the Vicinity of
Richmondville, Schoharie County

Dear Mr. Federick:

We have received your letter of April 1, 1971. Your reply is dissappointing.

1. Contrary to your inference, the Richmondville Property Owners Committee is composed of both recent property owners and people who have lived in the area for many years. We are enclosing herewith copies of 18 additional signatures to the petition.
2. Of the six meetings you have listed, only two were held for the general public; only one was held for the general public of Richmondville; all took place within less than two months; the last took place nearly two years ago.
3. That the opportunities for a corridor public hearing published in September, 1969 (sic) were not answered only raises questions about the performance of the various local officials' duties as public servants. A typical response has been: "I thought somebody else would ask for the hearing."
4. You state that there has been local newspaper coverage of this subject. The newspapers which in the past carried stories about the public informational meetings, are presently carrying stories about people asking for more information. See enclosures.
5. In our letter to you of March 26, 1971, we expressed our opposition to corridors A-1 and A-2 (coincident through Richmondville) as shown on the map which your office provided us. We also stated that our opposition is based, among other things, upon our analysis of the Richmondville Planning Report. The detailed maps contained in this

report show a definite line of the probable course of I-88 if corridor A-1, A-2 is selected. That this line would be probable can easily be seen by even a cursory examination of the local topography. That the "considerable culture" which we listed would be affected is also obvious. It should be noted that the Planning Report accepted Alternates A-1 and A-2 as the only available corridor given by the Department of Transportation. Apparently Alternates A-3 and A-4 had not been proposed at the time of writing of the Report. Hence, it is assumed that the writers of this intensive report were never in a position to even consider the merits of corridors A-3 and A-4.

6. In your letter there is no indication of compliance with our request for a public hearing. To state our position once again: If corridor A-1, A-2 is still being considered, then we feel that there must be a public hearing on the corridor selection before the decision is made.

Sincerely,

THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE

John LaBarca
Guy W. Schmacher

John LaBarca, co-chairman
Guy W. Schmacher, co-chairman

Enc

cc: State Assemblyman Edwin F. Mason

July 29, 1971

P. O. Box 91
Richmondville, N. Y.

Mr. Joseph C. Federick
Regional Director of Transportation
71 Frederick Street
Binghamton, New York 13902

RE: Proposed Interstate Route I-88 in the vicinity of Richmondville
Schoharie County

Dear Mr. Federick:

Pursuant to your legal notice published in the Cobleskill Times-Journal of July 7, 1971, the Richmondville Property Owners Committee is again going on record as being against proposed corridors A-1 and A-2 as proponents of corridors A-3 or A-4 for the reasons stated in our March 26, 1971 and April 26, 1971 letters to you.

The specific items of those letters which fall within the DOT Policy and Procedure Memorandum (PPM 20-8) definition of "social, economic, and environmental effects" are as follows:

1. Recreation and parks - the village park, the swimming pool, the duck pond and fishing stream, and the school playfield - are either totally destroyed or damaged by A-1 and A-2 while left untouched by A-3 and A-4.
2. Aesthetics - the location of a four-lane divided highway close to the above locations (those which would still have part remaining) would render them undesirable and possibly useless. The highway would also be within 100 feet of existing homes on River Street which would then have a noisy, polluting highway to replace a quiet, attractive duck pond, stream and waterfall. The Central School would have an existing stream, woods and playfield replaced by a highway which no one in their right mind would consider an aesthetic trade. A-3 and A-4 run through a relatively unpopulated area on the outside of the village affecting none of these spots.
- But the larger view is that of a highway which runs through a populated valley and village, disrupting and destroying existing community patterns (A-1 and A-2) versus a highway which runs through a sparsely populated hillside overlooking the scenic Schoharie Creek Valley and being an asset to motorist and valley dweller alike (A-3 and A-4). Mr. Federick - there is a choice which can be made.
3. Public Utilities - two village reservoirs, the village water treatment plant, the water main connecting those two, the village sewerage treatment plant and the village garage are all in the path of A-1 and A-2 (virtually every public utility the village has). A-3 and A-4 don't even come near these utilities.

2.

4. Public Health and Safety - the location of I-88 so close to the center of the village and its recreation areas can be avoided with corridor alternates A-3 and A-4 which run in the less developed south edge of the village.

5. Residential and neighborhood character and location - as stated in item 2, alternates A-1 and A-2 would run adjacent to the oldest and most scenic part of the village, totally destroying the existing character of this section with its close proximity to the duck pond, creek, recreation, historic and shopping districts. A-3 and A-4 would run on the opposite side of the village from these districts in an undeveloped and less residentially desirable area than A-1 and A-2.

6. Conservation - regarding the best use of natural resources, A-1 and A-2 would ruin the best cropland in the town by running through the valley, destroying and dividing some of the best and most productive farms in the county. A-3 and A-4, running in hillier regions would consume grazing land of which there is a surfeit in this hilly region. A-1 and A-2, by running along the valley, would disrupt the watershed area of Richmondville and Cobleskill Creek with its feeder streams which puts into question the pollution of the water supply for Richmondville during the construction period and might end forever fishing in Cobleskill Creek.

7. Natural and Historic Landmarks - alternates A-1 and A-2 will pass right through the Papernill Historic Site, Old Gristmill Historic Site (both with their stream and waterfalls) and the Residence of Civil War Soldier Corporal Tanner, all landmarks recognized by the New York State Historical Society with landmark signs. To quote from the Comprehensive Plan Report for the Town and Village of Richmondville, page 144: "The town and village are fortunate in having several sites and structures of historical interest. These sites and structures help to reflect the area and Schoharie County as an important historical region in New York State." Wasn't this ever taken into consideration when deciding upon a corridor or did you think we wouldn't mind losing our historical past in a highway?

8. Noise, and air and water pollution - all locations of I-88 will create more pollution than presently exists, but A-1 and A-2 running along Route 7 and just north of the village would be the worst of all evils considered because: 1. It runs through the densest part of the town and village and, 2. The prevailing west to northwest winds will blow the noise and air pollution into the village. A-1 and A-2 as stated in item 6 above cuts through the watershed area for the village water supply in addition to the reservoirs and water treatment plant. The Department of Transportation is willing to jeopardize our water supply, our clean air and our peace and quiet because you have committed yourselves to a route while only giving lip-service to alternates which, though maybe more expensive, are superior in every other way.

9. Property values - To anyone living in this area, it is an obvious fact that the path of alternates A-1 and A-2 will traverse many more private dwellings and businesses than A-3 and A-4 despite the numbers presented in the DOT Environmental Impact Report, which brings into question the veracity of the conclusions of the whole report. It seems that the Department of Transportation has manipulated the assumed

3.

alignments of the alternates to discredit A-3 and A-4 and to cast A-1 and A-2 in an untruthful light. Any alignment of A-1 or A-2 will lower property values along its route because of the density and narrowness along the route while A-3 or A-4 can be aligned along the edges of farms and woods to minimize the effect on the property values along its path. When A-1 or A-2 reach the village of Richmondville they run adjacent to the oldest and finest part of the village, destroying those things which make it so fine. What will these homes be worth with a noisy, polluting highway next to them? What can you do to replace that loss? A-3 and A-4 have none of these detractions.

10. Education - as stated in item 2 above, alternates A-1 and A-2 would require part of the existing playfields of the Richmondville Central School, which the Comprehensive Plan Report for the Town and Village of Richmondville states on page 146, "Richmondville Central School Playfields - This site is inadequately developed and should include additional recreational facilities for soccer and eventually football. This area could be reduced in size by the alignment of Route I-88 along its northern border, so consideration should be directed to future land acquisition." The playfields are presently bordered on the west by the public park, on the north by the Cobleskill Creek and hill, on the east by existing homes and on the south by the school. If I-88 takes away from this locked-in area, it can only make an inadequate facility worse. Also, the noise and pollution from a major highway only 600 feet from the school can only be a detriment to education.

11. Displacement of Families and Businesses - see item 9 above.

12. Operation and use of existing highway facilities and other transportation facilities during construction and after completion - A-1 and A-2 require the relocation of Route 7 in the West Richmondville area and cross it at two other points to the east. In addition to disrupting Route 7, the major highway in the area, numerous feeder roads would be disrupted and cut off, these roads serving as the only means of access to a paved road for many farms in the area. Even after I-88 is completed, these roads would still be left without access to either Route 7 or I-88, as underpasses were dismissed by your department and I-88 will not provide interchanges for these rural roads. Alternate A-4 runs parallel to one rural road cutting off no other roads and leaving the ones on Route 7 intact both during construction and after completion.

In order for I-88 to have any beneficial value to the communities through which it passes, there must be an interchange nearby. While it has been informally stated by representatives of the Department of Transportation that the possible alignments of A-3 or A-4 corridors preclude any interchange at Richmondville, no specific information supporting this statement have been forthcoming, and the corridor maps issued by the Department of Transportation seem to contradict this assumption. It should be noted that the village officials are highly concerned that an interchange must be provided for their community, even to the point of accepting the detrimental effects of the highway passing directly through the village in order to obtain an interchange. The Department of Transportation has thereby been able to exert great pressure on the officials and the public to gain approval of their preferred corridor (A-2).

All of the criteria that you have set up for the evaluation of alternate corridors point to the painfully obvious conclusion that the Department

4.

of Transportation is ignoring its own directives, skirting the law and running roughshod over this community - badgering, lying and ignoring individuals who want public hearings, threatening the village officials with the loss of an interchange if they didn't accept your choice. The Department of Transportation has whitewashed its responsibility under the National Environmental Policy Act of 1970, lied in your Environmental Impact Statement (page 10, I. There are no known historic sites within the corridor that would be affected by the expressway." "3. Air Pollution ... because every effort has been made to locate the expressway away from developed areas, air pollution from vehicle exhaust will be minimum." "No publicly owned parkland need be appropriated although a small parcel of underdeveloped property owned by the Richmondville Central School District may be required. A sliver of surplus, unused and underdeveloped land - an offshoot of a recreational area containing a village swimming pool - will be required.", disregarded its own directive FPM 20-8 which spells out those social, economic and environmental factors to be considered when choosing a corridor, and violating the Federal - Aid Highway Act of 1970 (Sec. 129) which requires, "(a) Any state highway department which submits plans for a Federal - aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has held public hearings" The fact is no public hearings have been held.

In addition to the above mentioned laws, the DOT violates sections 23 U.S.C. 138 and 49 U.S.C. 1653 (f), both of which include 49 U.S.C. 1651 (b) (2) which prescribes preservation of the environment, "After the effective date of the Federal - Aid Highway Act of 1958, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area ... of national, state or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, w.. or historic site resulting from such use."

Mr. Federick, the fact remains that you have not fulfilled your obligations under these laws and your responsibility as a public official. It is your duty under these laws to plan and construct highways with the involvement of the communities they affect as well as according to good highway planning principles.

The Richmondville Property Owners Committee remains unalterably opposed to corridors A-1 and A-2, and unequivocally in favor of A-3 or A-4, and again demands official public hearings to involve this community with I-88.

THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE

John LeBarca, co-chairman
Guy Teschnacher, co-chairman

August 10, 1971
P.O. Box 91
Richmondville, New York

Mr. R. R. Bartelsmeyer
Deputy Administrator
U. S. Department of Transportation
Federal Highway Administration
Washington, D.C. 20591

Re: Proposed Interstate Route I-88
In the vicinity of Richmondville,
Schoharie County, New York

Dear Mr. Bartelsmeyer:

Enclosed is a copy of our letter to the State Regional Director of Transportation explaining our position regarding the above proposed expressway. Also enclosed is a copy of a petition signed by local property owners opposed to the proposed location of I-88.

We agree with the proponents of this highway as to the necessity for such a mode of transportation for Schoharie County, but we object to the placement of the highway in our area for the reasons stated in the enclosed letter. We also find fault with the amount of participation the Department of Transportation has allowed the public. When this highway was conceived, no public hearings and no alternate routes were required by the Department of Transportation and so considerable time and energy were invested in only one route now known as A-2 (which was presented to the public at information hearings three years ago.) No other alternates were presented! No wonder so little public interest was aroused--there were no alternates to discuss and consider and therefore no great interest to hold a public hearing.

Since that time the planning of I-88 has fallen under the Federal Aid Highway Act of 1968 and 1970 Section 128 of title 23 of the U.S. Code, and the National Environmental Protection Act of 1970, which require public hearings and alternate routes to be presented to the public. Because of the initial commitment the State Department of Transportation has made in A-2 and the short time left to design the highway, we can understand their reluctance to consider alternates.

The effect of which this community is what concerns our committee. This highway is the most influential event to happen to this community in its history and will make the difference between its life and death. If this highway does not run to the undeveloped south of this village rather than through its center at the north, then you can write Richmondville off the map.

BEST COPY AVAILABLE

J. M. D. [unclear]
Deputy Administrator
U. S. Department of Transportation
Washington, D.C.

We have tried to present the facts to you. Please consider each item in the enclosed letter. The State Department of Transportation has turned deaf ears to our pleas, we can only ask that you do not.

Yours truly,
THE RICHMONDVILLE PROPERTY OWNERS COMMITTEE

John LaBarca, Co-Chairman

c.c. Mr. Joseph C. Frederick



U S DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20591

SEP 22 1971

IN REPLY REFER TO
EV-20
New York

Mr. John LaBarca
Co-Chairman, The Richmondville
Property Owners Committee
Post Office Box 91
Richmondville, New York 12149

Dear Mr. LaBarca:

This is in response to your August 10 letter to Mr. Ralph R. Bartelsmayer concerning the construction of Interstate 88 in the Richmondville area.

We have been advised by our field office in Albany that State personnel met with the various town officials and area residents on numerous occasions to discuss the corridors being studied and to obtain their comments. Subsequent to these meetings, the State offered the public an opportunity for a corridor public hearing to discuss the alternates studied; however, only one request was received which was later withdrawn.

The New York State Department of Transportation is now preparing a final Environmental Impact Statement. This statement will include a determination pursuant to Section 4(f) of the Department of Transportation Act of 1966 for the affected conservation lands. The State has submitted its recommended highway location to the Federal Highway Administration for approval. However, we are holding that request in abeyance until the Environmental Impact Statement has been approved.

Since the State is primarily responsible for the location and design of its highway we suggest that you again contact officials at the New York State Department of Transportation and present your views. Please be assured that before we approve the location of this route all Federal requirements will have been met.

Sincerely yours,

for *R. E. Hines*

Michael Lash
Director of Environmental Policy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
CAPITAL REGION CITIZENS COMMITTEE, et al., :
Plaintiffs, : 72-CV-254
-against- :
JOHN A. VOLPE, Secretary of Transportation : REPLY
of the United States, et al., : AFFIDAVIT
Defendants. :
-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

HERBERT A. POSNER, being duly sworn, deposes and says:

That this affidavit is made in reply to the affidavits of James E. Cullum, J. J. Barakos, and Raymond T. Schuler, filed in opposition to plaintiffs' motion for a preliminary injunction enjoining defendants from the acceptance of bids, signature of contracts, or the expenditure of funds in connection with the subject highway construction relating to Interstate Route 88 pending determination of their motion for summary judgment currently pending before the Court and, subject to the determination of the Court herein with regard to the legality of the project and further review, from doing so contrary to law; and, further, asking that jurisdiction be retained to assure that the authority and policies of the Department of Transportation are brought into conformity with the intent, purpose, and procedures of the National Environmental Policy Act of 1969, and in conform-

ity with law.

NATURE OF MOTIONS

Currently pending before the Court are motions by defendants for summary judgment. At no time have plaintiffs filed a cross-motion for summary judgment; on the contrary, in view of the factual issues involved, plaintiffs have asked that defendants' motions for summary judgment be denied.

In particular, it is plaintiffs' position that defendants' motions for summary judgment under Rule 56 must be denied on the basis that there are genuine issues as to material fact and that the moving parties are not entitled to judgment as a matter of law. At the same time, it is recognized as appropriate under Rule 56(d), with regard to a case not fully adjudicated on motion, to specify those facts which appear to be without substantial controversy on the basis of the pleadings and affidavits, and to rule on such questions of law as may expedite the further handling of the case. These appear to be (1) inclusion of the project in the Interstate System, (2) applicability of the Greene County decision in its broadest aspects and of N.E.P.A. in its procedural and substantive applications, and (3) navigability of the Susquehanna.

As set forth in the moving papers on this motion for a preliminary injunction, some time in May 1973, while the matter was still sub judice with regard to the motions of the Federal and State defendants for summary judgment, it came to affiant's attention that, notwithstanding the posture of the matter before this Court, the State defendants announced a low bid of almost eight million dollars for construction of approximately four miles

of the proposed project in the town of Sidney in Delaware County. This was protested by letter of counsel, dated May 8, 1973, to the attorneys for the respective Federal and State defendants. A copy of the letter of William Hoppen, dated May 8, 1973, is attached as Exhibit "A" to this affidavit; to date no response has been received to that letter of protest, either by way of answer or acknowledgment.

The article in the New York Times, dated May 5, 1973, upon which this knowledge came to counsel's attention is attached as Exhibit "B".

On May 17, 1973, affiant wrote to the Honorable Arthur Levitt, Comptroller of the State of New York, calling this matter to his attention and questioning defendants' action while the matter was yet sub judice; the Comptroller was asked whether the State Department of Transportation or the Budget Director had made any request for fiscal approval of this particular project involving pre-construction in the Susquehanna corridor. A copy of the May 17th letter to the Comptroller is attached as Exhibit "C".

Thereafter, sometime after May 29, 1973, affiant received a reply to his inquiry, on behalf of the Comptroller, that the Department of Audit and Control had received a budget allocation for the project, that defendant Department of Transportation had requested obligation of Federal funds thereto, that the Federal defendants had approved it, and that the defendant Department of Transportation had advised the Comptroller's office that "they can find no reason for not awarding the contract." A copy of the letter of Martin Ives, Deputy Comptroller, dated May 29, 1973,

is attached as Exhibit "D".

In Deputy Comptroller Ives' letter, affiant was advised that the Comptroller's Office, however, had not yet received a contract for approval. On or about July 5, 1973, in a telephone conference with the Deputy Comptroller, affiant was advised that the contract had been approved. It was thereafter that a determination was made to proceed by way of motion for a preliminary injunction; inasmuch as the question of the legality of I-88 was sub judice, and no decision had yet been made, it was decided to proceed by order to show cause. By the middle of July the necessary papers were prepared, and communication was had with the Court; affiant was advised, by reason of the summer vacation schedule, that no action could be taken to schedule hearing of the motion until some time near the end of August. In the meantime, around the beginning of that month, affiant sent the original papers to be signed; this was done on September 10th, and thereafter affiant took prompt steps to serve and file the necessary papers for the original September 24th return date, subsequently rescheduled by the Court for September 28th.

Wholly without basis is the claim of "laches" sought to be asserted by defendants (Affidavit of Cullum, Sept. 25, 1973, para. "7"; Federal Memorandum of Law, Point III; State Memorandum of Law, pp. 5-6). With regard to the proceedings prior to the argument of the summary judgment motions in November, 1972 plaintiffs participated, to the extent that they were able to do so, in the hearing and environmental review process incidental to securing Federal approval of the highway. See Affidavit of LaBarca, Oct. 24, 1972, and Exhibits attached; also, Exhibits 90-94 to Af-

fidavit of Memmott, with regard to hearing in Albany and Schenectady counties; Comments of plaintiff Capital Region Citizens Committee to Draft Environmental Impact Statement - Letter August 3, 1971, attached as part of Appendix C to Exhibit 64 to Affidavit of Memmott.

Plaintiffs pursued their administrative remedies and, when it appeared that such were exhausted, brought suit. Much of the advance planning referred to by the State in its earlier presentation to the Court was not a matter of general public knowledge; some work actually antedated the Interstate designation (see Affidavit of LaBarca, pp. 5-6. supra) and apparently represented a State commitment undertaken on its own responsibility, with the expectation, at least in the case of the Oneonta segment, of Federal funding if the entire project is eventually to be approved.

Furthermore, the factual issues raised with the alleged failure of defendants to have complied with 23 U.S.C., Section 128, with regard to the holding of public hearings, particularly with regard to the practice of negotiated withdrawals of requests for public hearings (see Affidavit of LaBarca, supra, pp. 1-15, with Exhibits attached), make particularly inappropriate, apart from other considerations, the raising on the part of these defendants of the defense of "laches". It would not appear, on the basis of the record, that the defendants are in a position effectively to assert an equitable defense.

The case raises major issues involving the implementation of the National Environmental Policy Act of 1969, the scope of the Federal-Aid Highway Act, and other matters involving the

interrelationship of the Nation's highway building program and of its environmental policy. The defendants, taking into account their governmental responsibilities, must recognize and face the importance of these issues and not impede, by petty means, their deliberate resolution and the judicial definition, under law, of their own responsibilities in these programs.

To the extent that defendants have criticized plaintiffs (supra) with regard to "laches" in failing to have sought preliminary injunctive relief, it is not to be assumed that State and Federal officials will violate the law. Defendants moved for summary judgment pursuant to Rule 36, and for other relief. In opposing the motions for summary judgment, plaintiffs urged, upon argument, inter alia, that defendants had illegally approved inclusion of the subject project as part of the Interstate Highway System; that they had failed to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C., Section 4321, et seq., with regard to bringing the authority and procedures of the United States Department of Transportation into conformity with the intent, purposes, and procedure of said Act; that defendants had further failed to comply with the requirements of the National Environmental Policy Act in that the project sponsor had not met the substantive requirements of existing procedures in its failure adequately to have reported with regard to the project's impact on air pollution, noise pollution, and on other protected environmental areas, or in terms of alternatives to the proposed action; that the segmentalization of environmental reporting, to the extent herein practiced by the project sponsor, was a frustration of the comprehensive planning function, was inconsistent with the purpose of the Court of Appeals for the Second Circuit in the case of Greene County Planning Board v. Federal

Power Commission, 455 F.2d 412 (1972), cert. denied Oct. 10, 1972, and with the requirements of the National Environmental Policy Act itself; that the Susquehanna River is navigable; that defendants had failed to comply with the terms of Section 4(f) of the Department of Transportation Act, 49 U.S.C., Section 1653(f), as amended, and Section 138 of the Federal-Aid Highway Act of 1968, 23 U.S.C., Section 138, in connection with the preservation of the natural beauty of the countryside and of protection of public park and recreation lands; that defendants had failed to comply with 23 U.S.C., Section 128, with regard to the holding of public hearings, and with regard to the Court's pendent jurisdiction.

Indeed, these serious and substantial questions with regard to the legality of the I-88 project were brought to the attention of the Federal and State defendants in May of 1972, at the time of institution of suit.

It was not, however, until the article appeared in the New York Times (Exhibit "B", attached) that it came to the notice plaintiffs that the defendants were proceeding with construction, while the matter was yet sub judice, in terms of acceptance of bids, signature of contracts, and expenditure of funds in connection with the project. Affiant was reluctant, while the case is pending before the Court, to interfere with the State's holding of hearings or the official processing of the matter short of this final construction stage. That point, however, has now been reached, and requires injunctive action to restrain the State and Federal defendants to anticipate the decision of the courts by building the highway before the courts rule, or enough of it to assert specious equitable grounds for being permitted to finish it even in the face of an eventual decision as to the illegality

of its construction.

It would not appear from the foregoing, apart from the equitable standing of defendants to raise the issue of laches - which will be considered later - that there has been no such unexplained delay on the part of the plaintiffs of a nature prejudicial to defendants sufficient to justify the application here of this equitable doctrine.

Indeed, as would appear from the Federal Memorandum of Law, Point III, 2nd page, 1st para.; and the Affidavit of Barakos, Sept. 19, 1973, the actions of defendants, although unknown to plaintiffs or their counsel, were proceeding even as the matter was being prepared to be argued before the Court, upon the basis that the "defendants had administratively decided, in light of plaintiffs apparent decision not to seek temporary relief, to proceed with the project with a view toward ultimate success on the merits." While this may have gained them a march on the courts, it certainly, in view of the serious legal questions raised with regard to the project, confers on them no equitable rights cognizable in defense of their illegal actions pending the conduct of the litigation itself.

It is this larger aspect of the role of these defendant agencies vis-a-vis the courts and of their standing, in light of the circumstances, to assert an equitable defense, that will next be considered.

EQUITABLE STANDING OF DEFENDANTS

It is the position of plaintiffs that the responsibility scrupulously to follow the law rests as directly upon the State

and Federal highway officials involved as it does on the Court, and that neither considerations of agency administrative goals nor the opportunity to use governmental contracting procedures in violation of law relieves these officials of their responsibility. In a period of well publicized lax governmental morality, the actions of defendants here parallel those instances of official misconduct now receiving attention in Washington, to the extent that both appear to be actuated by the established administrative principle that the end justifies the means, and the law permits a government official, charged with such responsibilities, to do anything he can get away with. This anomalous attitude, although widespread in government circles, is not in the public interest and most definitely is not in accordance with the law.

INCLUSION OF PROJECT IN INTERSTATE SYSTEM

Plaintiffs have heretofore urged upon the Court, in light of the statutory history of Section 14(b) of the Federal-Aid Highway Act of 1968, P.L. 90-495, that defendants have illegally approved the inclusion of the subject project as part of the National System of Interstate and Defense Highways, the so-called Interstate System, for purposes of funding and, unless restrained by the Court, are prepared illegally to disburse Federal funds in connection therewith and in violation of law; as it clearly appears from the facts, the action of defendants in approving the inclusion of the subject project as part of the Interstate System was arbitrary and capricious and in excess of statutory authority (43 U.S.C., § 103(e)(1), (3); Federal-Aid Highway Act of 1968, P.L. 90-495, § 14(b); 1968 U.S. Code Cong. and Adm. News, pp. 3535-3536; Affidavit of H. A. Fosner, Oct. 24, 1972, pp. 1-5, 9-16).

In connection with this point, note should be taken of the current affidavit of Raymond T. Schuler as New York State Commissioner of Transportation with regard to the intention of the State of New York to construct this project even without Federal aid, that is, not as part of the Interstate System and in the absence of Federal funds. In particular, after having referred to the project's inclusion in the 1968 and 1972 master plans, and the State's interest, outside of the framework of Federal funding, of advancing this project toward completion, Commissioner Schuler stated as follows (Affidavit, Sept. 24, 1973, p. 6):

"The decision to include this expressway in the State's Master Plan was based upon numerous economic and other factors unrelated to the availability of Federal funds. While it is recognized that such funds might be delayed or, perhaps, withdrawn altogether in the event of an adverse conclusion to this litigation, the project itself is important enough to the State of New York to be completed, though perhaps in some revised form and schedule, even without Federal aid."

* * *

Although it is premature, at this point, to speculate upon such an eventuality, it is not clear that the State, having opted for inclusion in the Interstate System, can thereafter ignore Federal requirements for construction which may take place in this corridor - unless it were to be determined, of course, that the project was never properly included as part of the Interstate System in the first place, a possibility which the Commissioner, now, for the first time, has publicly recognized.

Where, as here, Federal funds appear to have been accepted, in part, for the planning and implementation of the project, the subsequent difficulty, on the part of the State, in complying with Federal requirements to complete it would not, in and of itself, acquit the State (if it were to seek to use its own funds) of compliance with Federal environmental and hearings standards, including protection of public park and recreation lands; for that reason, Commissioner Schuler's expressed determination, notwithstanding the current court proceeding "to continue advancing this project toward completion" (Affidavit, p. 6) must be tempered by the realization that even use of State funds alone for the balance of the project would not relieve the State of the Federal environmental and community responsibilities it has already assumed by reason of opting for inclusion in the Federal-Aid Highway system.

In view of the foregoing, and in light of the illegal and unwarranted action by defendants with regard to attempted construction of the proposed project while the entire matter is sub judice and, indeed, with regard to determination of defendants' own motions, it is particularly appropriate that the Court exercise its equitable powers in this respect to vindicate the priority of the judicial process; such exercise of injunctive power should involve continuing retention of jurisdiction to assure that the authority and policies of the Department of Transportation are brought into conformity with the intent, purpose, and procedures of the National Environmental Policy Act of 1969 and with the further order and directives of this Court.

This should extend, it is respectfully submitted, even

to the extent that the State, eventually, may seek to avoid the effect of Federal environmental and community-protection procedures by the use of its own funds; New York's Federal commitment in this corridor is not lightly to be disregarded, or to be case aside in the event the State finds that Federal requirements for completion of the project are too onerous or otherwise unacceptable in terms of protection of environmental and community values.

It should be emphasized that plaintiffs have not, and do not now, seek to interfere with the State's holding of hearings, planning, or the official processing of the matter short of acceptance of bids, signature of contracts, or expenditure of funds in connection with the project. Before such final steps are taken, it is respectfully submitted, there should be a ruling on and final disposition of the legal questions raised with reference to the project.

Plaintiffs have shown that they are likely to prevail on the merits; and the balance of irreparable harm favors the issuance of the preliminary injunction. The issuance of the said preliminary injunction will not cause undue inconvenience or loss to defendants, except in ways legally impermissible for them to pursue; but will prevent irreparable injury to plaintiffs in terms of construction of the proposed project in violation of law as more fully set forth in the affidavits and verified Complaint. Furthermore, on the broader ground of the public interest and particularly in those situations, as here, involving application of the National Environmental Policy Act, the Court has power, which it should exercise, in terms of effectuating Congressional policy by the appropriate exercise of injunctive relief.

For the foregoing reasons it is respectfully prayed that the preliminary injunction should be granted restraining defendants from the acceptance of bids, signature of contracts, or the expenditure of funds in connection with the subject project pending the further order and directive of this Court; and that jurisdiction should be retained to assure that the authority and policies of the Department of Transportation are brought into conformity with the intent, purpose, and procedures of the National Environmental Policy Act of 1969, and in conformity with law; and with the further order and directives of this Court.

Herbert A. Posner

Herbert A. Posner

Sworn to before me this

5th day of October, 1973.

A. Zedman Lurie

G. EMMETT STODLER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3917940
Qualified in New York County
Commission Expires March 30, 1974

William Hadden

ATTORNEY AND COUNSELLOR AT LAW
 ARDLEY-ON-HUDSON
 NEW YORK 10503

(914) LY 1-0800
 (212) WO 8-8888

May 8, 1973

James E. Cullum,
 Assistant United States Attorney
 Northern District of New York
 U.S. Post Office & Court House
 Albany, New York 12207

Douglas S. Dales, Jr.
 Assistant Attorney General of
 the State of New York
 The Capitol
 Albany, New York 12224

Re: Capital Region Citizens Committee, et al.
 v. Volpe, et al. 72-CV-254 -
 United States District Court
 Northern District of New York

Gentlemen:

It has come to my attention that the New York State Department of Transportation, while the above matter is yet sub judice, has announced a low bid of \$7,989,457 for construction of approximately four miles of the Susquehanna Expressway in the town of Sidney in Delaware County. According to the Department's announcement, the project calls for the construction of twin two-lane asphalt pavements separated by a median. Three bridges will be constructed and Route 8 will be resurfaced for 3.4 miles. The low bidder was announced to be John Arborio, Inc., of Poughkeepsie.

If, as we believe, the State of New York has failed to comply with Federal environmental and highway planning requirements, it may well be that the State will be required to pay the entire cost itself of this type of pre-construction in the Susquehanna corridor. Where application has been made, as here, for Federal funding in connection with an Interstate Highway project, the State is required to follow Federal as well as State law, including the National Environmental Policy Act of 1969 and Federal laws relating to highway planning and the Susquehanna River.

Suit has been brought, and the New York State Department of Transportation, along with the Federal defendants, has asked the Court for a ruling respecting this project, in the form of the current motions now before the Court and awaiting decision. It is indeed inappropriate, in our judgment, that having sought the aid of the Court in ruling on these questions and while the matter is still before the Court, that the State of New York appears to anticipate the result by beginning construction.

May 8, 1973

-2-

It is for these reasons that we respectfully urge that the State not approve the reported bid for this segment, but defer further State action in this matter until the Court has acted on the current motions, and the legality of what is proposed to be accomplished is first established.

Such deferral, which I believe prudent on the part of the State, would naturally be without prejudice to its position, and construction could proceed in the event there is court approval of the procedures which have been followed. On the other hand, if such court approval is not forthcoming, the State will have avoided being placed in the embarrassing position of having pre-expended State funds on a Federal project on which there will be no Federal reimbursement, to the detriment of the State treasury.

I am disinclined, while the matter is in this posture, to going beyond the step of calling this action to your attention and thus putting the State on notice, in our opinion, that they are in violation of law in so proceeding at this time; further steps, in this regard, are deferred until the Court has acted with reference to the current motions, and it is clearer where we stand, respectively, with regard to the various legal questions raised and now pending decision.

Very truly yours,

WILLIAM HOPPEN
Of Counsel.

For Plaintiffs
Capital Region Citizens Committee,
Town of Rotterdam, et al. -
Herbert A. Posner, Attorney.

New York Times
May 5, 1973, p. 37

\$7.8-Million Bid Offered State Transportation Department said yesterday.
For Expressway Project The project calls for construction of twin two-lane asphalt pavements separated by a median. Three bridges will be constructed and Route 8 will be resurfaced for 3.4 miles.

ALBANY, May 4 (AP) — A low bid of \$7,898,457 was submitted for the construction of four miles of the Susquehanna Expressway in the town of Sidney in Delaware County, the boro, Inc., of Poughkeepsie.

May 17, 1973

Honorable Arthur Levitt
State Comptroller
State Office Building
Albany, New York 12225

Re: Susquehanna Expressway

Dear Arthur:

Recently the New York State Department of Transportation announced a low bid of \$7,989,457 for construction of approximately four miles of the above expressway in the town of Sidney in Delaware County.

There is pending in the U.S. District Court, Northern District of New York, an action concerning the above expressway (Capital Region Citizens Committee, et al v. Volpe, et al 72-CV-254). While this matter is yet sub judice, it is highly questionable for the State Department of Transportation to take any action which will involve fiscal consequences unless they already know the court's decision.

If the court should find that the State of New York has failed to comply with federal environmental and highway planning requirements, it may well be that the state will be required to pay the entire cost itself of this type of pre-construction in the Susquehanna corridor.

Has the State Department of Transportation or the Budget Director made any request to your office for fiscal approval of this particular project in the town of Sidney?

Thank you for your cooperation.

Sincerely yours,

Herbert A. Posner



ARTHUR LEVITT
STATE COMPTROLLER
MARTIN IVES
DEPUTY COMPTROLLER

STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

May 29, 1973

The Honorable Herbert A. Posner
Member of the Assembly
Assembly Chamber
State Capitol
Albany, New York

Dear Herb:

Comptroller Levitt asked me to respond to your letter of May 17 regarding a contract for the construction of the Susquehanna Expressway in Delaware County.

This is to advise you that we have received a budget allocation for the project and that the Transportation Department has requested that we obligate Federal funds for the project. We also have a letter from the Federal government approving the project. In addition, the Transportation Department advised us that they can find no reason for not awarding the contract.

As of this date, however, we have not yet received a contract for approval.

Please call me if you want to talk about it further.

Sincerely,


MARTIN IVES
Deputy Comptroller

MI:pgd
cc: Messrs. Lanahan
Holmes, T.

Exhibit "D"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

CAPITAL REGION CITIZENS COMMITTEE, et al.,	:	
Plaintiffs,	:	72-CV-254
-against-	:	<u>AFFIDAVIT</u>
JOHN A. VOLPE, Secretary of Transportation	:	
of the United States, et al.,	:	
Defendants.	:	

-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM HOPPEN, being duly sworn, deposes and says:

That he is of counsel to Herbert A. Posner, attorney for plaintiffs; this affidavit is made in connection with the pending motions now before the Court and awaiting resolution, particularly with reference to the alleged illegal delegation by the Secretary of Transportation to state highway agencies of his responsibility for the preparation of environmental impact statements under Section 102(2)(C) of the National Environmental Policy Act of 1969 and the illegality of current FHWA procedures with reference thereto, including PPM 90-1. Attached hereto and incorporated by reference are Plaintiffs' Second Brief in Support of Motion for Summary Judgment and Plaintiffs' Reply Brief in Support of Motion for Summary Judgment filed in the case of Callaway, et al. v. Volpe, et al., in the United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action File No. 16126 which, by reason of the thoroughness

of their review of the legal background and statutory history of the question now before the Court, in connection with a related highway review, should be of assistance to the Court in understanding the breadth of the issue involved in applying the requirements of the National Environmental Policy Act of 1969 to the authority and policies of the United States Department of Transportation.

A further broad aspect of the motions now pending before the Court, to put into perspective the relatively minor issues posed by the proposed intervention, is the relation of the continuing Federal and State highway-building program in the face of the growing energy crisis and a shortage of essential petroleum supplies that must, eventually, be considered in any evaluation of alternatives to the proposed action here involved. One aspect of environmental concern which is involved in any overall planning with regard to the continuation of the nation's current highway-building program, including further emphasis on the Interstate System itself, and the maintenance of balance between rail service, on the one hand, and automotive and truck transit, on the other, is the inconsistency between the continuation of the highway building program with the growing problem of meeting our burgeoning energy needs in an era of increasingly short energy resources, the relative attractiveness, in this respect, of the rail and public transportation modes, vis-a-vis the truck and private automobile, and the very economic security of the country in terms of the wrench that excess energy use requirements will give, in the future, to our already strained situation with regard to balance of payments.

In a recent projection by the National Petroleum Council (U.S. Energy Outlook - An Initial Appraisal, 1971-1985), oil imports are expected to rise from their present level of 25.8 percent of domestic demand to 57 percent by 1985. At the end of last year, the balance of payments deficit (the amount by which imports exceeded exports) stood at \$2.5 billion, and the Department of Interior estimates that proposed oil imports by 1985 could raise the deficit by \$27.5 billion -- an intolerable burden on our international economic position.

In another government report, issued by the Office of Emergency Preparedness in the White House, it was suggested that we begin adjusting the demand side of the equation, involving not only measures to retain performance while increasing efficiency, but also to reduce consumption. Transportation accounts for 25 percent of our energy consumption (the other three major consumers being industry, electric utilities, and residential/commercial use. But enormous differences in efficiencies exist among the different modes of freight service, to the disadvantage of the highway/truck mode, as are revealed in the following table:

Table 2. Energy efficiency for freight transport (Source: E. Hirst, Oak Ridge National Laboratory, cited in Science, Vol. 178, Dec. 8, 1972.)

<u>Item</u>	<u>BTU per ton mile</u>
Pipeline	450
Railroad	670
Waterway	680
Truck	3,800
Airplane	4,200

Current consumption of motor fuel in the United States is reported

by the Federal Highway Administration of the Department of Transportation by release dated November 24, 1972, showing that motor fuel consumption, alone, in the United States, was expected to reach 107 billion gallons in 1972, a 5.5 percent increase over 1971. Exhibit "1", attached.

Still other comparative figures, these from the National Science Foundation, bear out the transportation efficiency, in terms of energy consumption, of the railroad as compared with the highway/truck mode of freight transportation. The National Science Foundation reported that transportation itself accounted for an increase of 166 percent in energy consumption in the 20 years between 1950 and 1970, mostly by reason of a massive shift to the automobile, the most inefficient mode of travel except the airplane. The Foundation's figures indicated that the country's best buy, in terms of efficient use of energy for freight haul, was certainly not the truck or airplane. In terms of ton-miles per gallon, the National Science Foundation released the following figures:

<u>Mode</u>	<u>Ton Miles Per Gallon</u>
Pipeline	300
Waterway	250
Railroad	200
Truck	58
Airplane	3.7

According to a report made by Dr. George W. Brown at the Third National Conference on the Transportation Crisis, Washington, D.C., in June 1972, and which is attached as Exhibit "V" to affiant's affidavit of October 24, 1972, on the motions currently pending before the Court (Affidavit of Hoppen, Oct. 24, 1972, p.

18, Exh. "V"; see pp. 17-21), the needs of our transportation system in terms of the use of non-renewable energy resources was related to the energy crisis. His conclusion was that we could not continue to squander fossil fuel to run our inefficient motor vehicle transportation system. The United States required 29.9% of the world's production of crude oil during 1969 to support our motor vehicle population. This consumption was accomplished by a country representing only 5.7% of the world's total population. In energy terms, we expended 16 times as much energy for feeding motor vehicles as was needed for feeding our entire human population. It is impossible to continue down this path. Each freeway project, such as that here involved, produces a major increment in fuel demand. Four times as much fuel is required per passenger mile to move people in private automobiles as is required for half empty 40 passenger busses. Ten times as many people per unit can be transported by bus in a given time, and rail passenger transport is even more efficient. 34% more fuel is required to move a ton of goods in heavy trucks than is required to move the same goods by rail. Freeways, such as the instant project, provide an enormous subsidy to truck shipments and discourage the inherently more efficient rail shipments. This squandering of fossil fuels caused the Director of the U.S. Geological Survey to state:

"In the United States, we have used more mineral fuels during the last 30 years than all the people of the world used previously. This enormous consumption will have to be doubled just to meet the needs of the people now living in the United States during the remainder of their lifetimes."

A specific and pertinent part of Dr. Brown's report related to the masking of the true economic costs of competing forms of transportation by reason of government subsidies to interstate trucking

which makes all traditional industry figures somewhat meaningless, and which is a telling commentary on the hollowness of the economic justification of the Interstate System, in terms of its relation to competing modes, including the rail mode, and in terms of the necessity of bringing the authority and policies of the Department of Transportation into conformity with the intent, purpose, and procedures of the National Environmental Policy Act, particularly with regard to the manner of preparation of environmental impact statements under Section 102 of the Act and the illegality of current FHWA reporting procedures with reference thereto, including PPM 90-1. This is particularly relevant, in terms of developing national energy policy, in terms of the failure of the project sponsor to have reported fully on alternatives to the proposed action and specifically with respect to the extent to which the purpose of the new road will not be primarily for local development in the corridor, but rather to facilitate highway truck traffic between Binghamton and Albany, and to points beyond, including New England and Pennsylvania. Slight reference is made (Exh. "64", p. 53) to The Delaware and Hudson Railroad Corporation, which currently operates rail freight service between the proposed highway termini. No information is given by the project sponsor as to the current levels of rail freight service in the corridor, or of a projection, based on experience with the effect of other highways on parallel railroads, of the impact that the construction of the new Interstate facility will have on the economic viability of continued rail service in the Susquehanna Corridor. According to figures supplied by the Supervisor of the Town of Mamaroneck, New York, the impact of a new highway can be dramatic, and ultimately destructive in its impact on existing rail service. For

example, as reported, this drastic result was quite evident in terms of the construction of the New England Thruway upon the parallel and now-bankrupt New Haven Railroad (part of the bankrupt Penn Central system), as follows:

In 1957, the year before the New England Thruway opened, New Haven Railroad freight operations yielded \$15 millions.

In 1958, fourteen months after the Thruway opened, New Haven Railroad freight operations yielded \$3.5 millions.

In 1960, they lost \$3.3 millions.

This obviously is of some importance from an environmental point of view, inasmuch as the protection and preservation of existing forms of rail service, including freight, is essential to the preservation of scarce energy supplies in the growing national energy crisis, apart from the preservation of other environmental values. This failure, on the part of the project sponsor, to have reported fully on the rail freight alternative to the building of this new highway is most significant in terms not only of the energy crisis but in terms of the substantial subsidy to the trucking industry, vis-a-vis the railroads, that is represented by the construction of a new Interstate Highway, including this one. In Dr. Brown's report (Affidavit of Hoppen, Oct. 24, 1972, Exh. "V") he noted that one example of special interest money of particular illumination, in terms of the interstate trucking subsidy, came from the records of the reports of the Federal Bureau of Roads and the Commerce Department. These showed that during the years of 1968 and 1969, 12.3 billion dollars per year were collected in road use taxes and fees. Of this amount 11.7 billion dollars were paid by automobile, bus, and small truck operators. Six hundred and eleven million dollars were contributed by interstate trucking operations (that is, under 5% of the total).

And yet, according to a study sponsored by the U.S. Bureau of Public Roads, one 72,000 lb. interstate truck causes as much damage to high grade pavements as 6000 passenger automobiles. Therefore, according to Dr. Brown, and on the basis of the facts as they appear from official sources, and adjusting for deterioration of pavements per mile traveled, the tax structure should have been inverted, with the heavy interstate trucks contributing 12.1 billion dollars in road use taxes, and the other highway users 211 million dollars.

The conclusion, based on the foregoing figures, was that the motoring public was, and still is, subsidizing heavy truck interstate freight shipments to the tune of 4.6¢ per ton mile. If rail freight shipments had been subsidized at the same rate as truck freight during 1969, we would have paid the railroads a 35.6 billion dollar subsidy.

It is in the light of these background figures as to the underlying economics of the proposed construction that the discussion by the project sponsor of alternatives is most unsatisfying. Particularly sparse in its presentation is the discussion of alternatives to the proposed construction in terms of improvement of the existing highway (Affidavit of Hoppen, Oct. 24, 1972, pp. 19-21). It should be noted, in this connection, that the Affidavit of Schuler (Oct. 24, 1973, last page) speaks in terms of possibly proceeding, in terms of some revised form and schedule, in the event of the delay or withdrawal of Federal funding in the event of an adverse conclusion of the litigation. To the extent that this alternative program may be in terms of local improvements to existing Route 7 and preservation of rail service

in the corridor such alternative program may have much to recommend it from the viewpoint of wise transportation and energy policy.

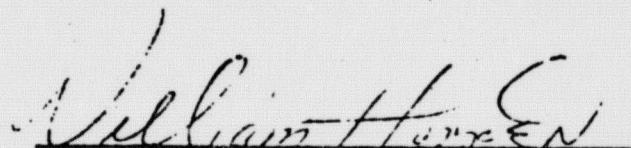
In any event, to return to the larger issue of the energy problem as related to transportation planning and the application of the requirements of the National Environmental Policy Act of 1969 to the authority and policies of the United States Department of Transportation, further material with reference to the energy problem is annexed as Exhibit "2", consisting of a further report by Dr. Brown to The Connecticut Conference On Transportation on May 16, 1973, "Transportation and the Energy Crisis". In this report relates, in further terms, the national transportation system to the use of scarce and irreplaceable energy resources.

By the National Environmental Policy Act of 1969, Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. § 4331), et seq., it is required that any Federal agency that contemplates action or actions which will significantly affect the quality of the human environment file a detailed statement or statements regarding the expected environmental impact of the proposed action, which statement or statements must accompany the proposal or proposals through the existing agency review process.

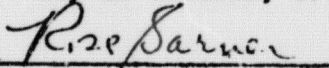
This the Department of Transportation has not done, either with regard to the instant project or with regard to its procedure under PPM 90-1 and related regulations with respect to the implementation within the Department of the requirements of the National Environmental Policy Act; instead, defendants have arbitrarily and capriciously refused to comply with the requirements

said Act in that they have not prepared and circulated the required statement or statements as required by the Act, but have improperly delegated to state highway agencies this important statutory responsibility, and have not taken measures as required by Section 4333 of Title 42 of the United States Code to bring the authority and policies of the Department of Transportation into conformity with the intent, purpose, and procedure of said Act.

In particular, the procedures of the Department of Transportation fail to conform with the requirements of Section 102(2)(C) of the National Environmental Policy Act, as a matter of agency practice and policy, in that the segmented submission procedure of which the instant environmental impact statements are, unfortunately, illustrative can in no wise be considered to meet the requirements of the National Environmental Policy Act in terms of the detailed statement required, and can in no wise effectively relate to the corridor and regional considerations involved, and to the larger systems of transportation of which these particular segments are but relatively small parts. It is also urged, in connection with the foregoing, that PPM 90-1 constitutes an illegal delegation of the Secretary's responsibilities under the Department of Transportation Act of 1966, 49 U.S.C. Section 1651.


William Hoppen

Sworn to before me this
25th day of October, 1973.


Notary Public, New York
No. 1234567
Qualified in West County
Commission Expires March 30, 1974



DEPARTMENT OF TRANSPORTATION

NEWS

FEDERAL HIGHWAY ADMINISTRATION

WASHINGTON, D.C. 20590

FOR RELEASE FRIDAY A.M.
November 24, 1972

FHWA--88-72 (202-426-0677)

Motor-fuel consumption in the United States is expected to reach 107 billion gallons in 1972, a 5.5 percent increase over 1971, the U.S. Department of Transportation announced today. Reports from States and other sources on motor-fuel consumption form the basis for the 1972 estimate, prepared by the Federal Highway Administration.

In 1972, the highway use of motor fuel is expected to exceed the 100 billion gallon level for the first time, reaching approximately 103.2 billion gallons. This is 877 gallons of fuel for every registered motor vehicle (excluding motorcycles). The total will include 94.9 billion gallons of gasoline and 8.3 billion gallons of special fuels (diesel, butane, etc.).

The highway use of motor fuel in 1972 is expected to be 5.8 percent more than in 1971, slightly more than the 5.7 percent increase in 1971 over 1970.

California is expected to lead the States in highway motor-fuel consumption in 1972 with 10.4 billion gallons. Texas and New York are next, with 7.1 and 6.1 billion gallons, respectively. These are followed by Ohio and Pennsylvania with over 5 billion gallons, Illinois and Michigan with more than 4 billion gallons each, and Florida and New Jersey with over 3 billion gallons each. These 9 States will account for 49 percent of the total highway consumption. Nine other States will use more than 2 billion gallons each of motor fuel on the highways in 1972.

The use of gasoline for farming, aviation, boating, etc., is expected to decline slightly to 3.8 billion gallons from its 3.9 billion gallon total for the previous year.

A table showing the estimated motor-fuel consumption for 1972 by States is shown on the back of this sheet.

(over)

Exhibit "1"
Page 1

ESTIMATE OF MOTOR-FUEL USE-1972¹

(In thousands of gallons)

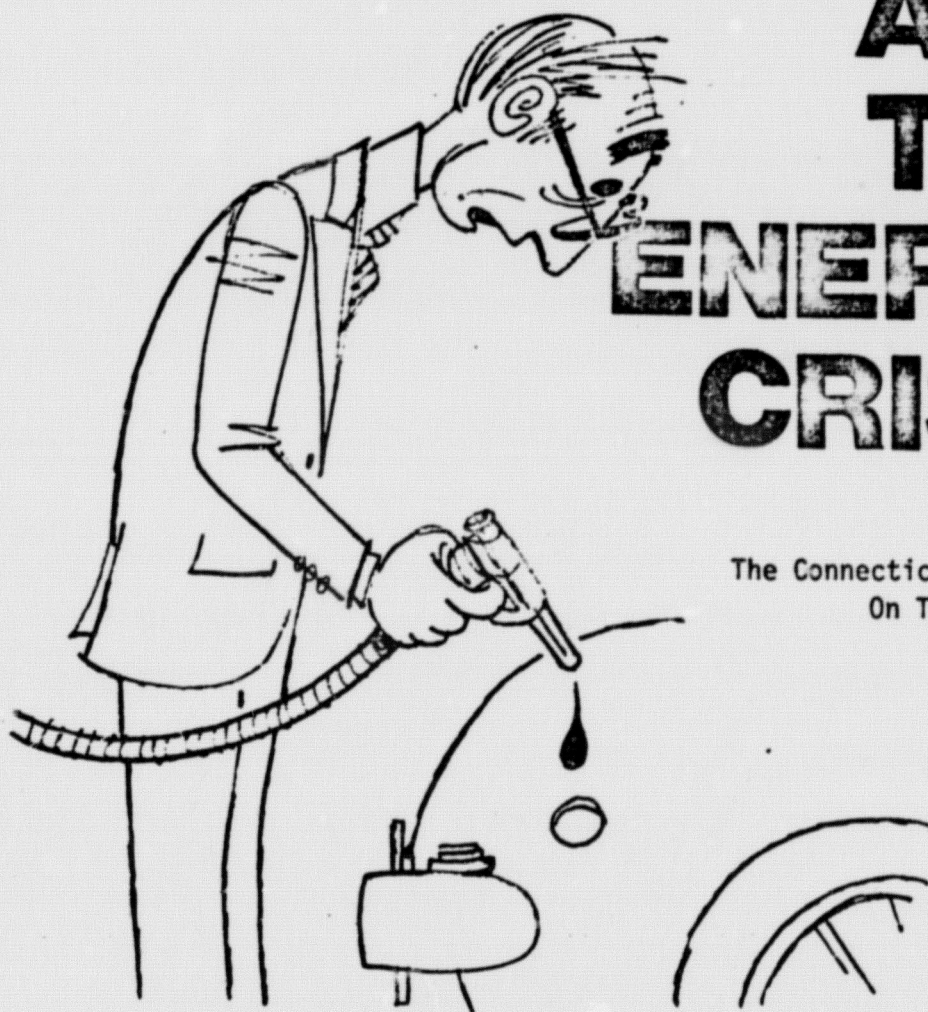
TABLE ED-F
OCTOBER 1972

STATE	HIGHWAY USE					NONHIGHWAY U.S. OF GASOLINE	TOTAL USE	
	GASOLINE	SPECIAL FUELS	TOTAL	PERCENT CHANGE 1972 1971	GALLONS PER MOTOR VEHICLE		AMOUNT	PERCENT CHANGE 1972 1971
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Alabama	1,735,605	161,231	1,896,836	7.0	863	41,946	1,938,782	6.7
Alaska	109,368	3,322	112,690	7.0	704	26,157	138,847	4.5
Arizona	1,012,304	127,715	1,139,539	7.4	907	42,747	1,182,286	7.3
Arkansas	1,040,260	124,684	1,172,944	6.5	1,054	30,724	1,203,668	6.4
California	9,670,372	728,430	10,406,852	6.0	812	273,687	10,680,539	5.8
Colorado	1,213,931	86,093	1,300,024	8.0	770	62,505	1,362,529	7.7
Connecticut	1,207,667	81,796	1,371,463	4.0	710	22,844	1,394,307	3.9
Delaware	272,705	16,545	289,250	3.4	890	6,046	295,296	3.2
Florida	3,614,671	247,157	3,861,828	7.7	807	145,049	4,006,877	7.4
Georgia	2,595,585	201,773	2,797,358	7.5	999	49,565	2,846,923	7.3
Hawaii	257,531	10,730	268,261	6.5	603	9,100	277,361	5.9
Idaho	408,117	36,455	444,572	6.2	845	41,097	485,669	4.8
Illinois	4,908,827	416,692	5,325,519	5.4	800	338,608	5,664,127	5.3
Indiana	2,554,238	324,524	2,878,762	4.2	968	96,694	2,975,456	3.7
Iowa	1,413,146	170,457	1,583,603	3.2	841	204,834	1,788,437	7.2
Kansas	1,162,791	118,094	1,280,885	5.5	778	139,734	1,420,619	4.8
Kentucky	1,591,617	140,527	1,732,144	6.3	830	31,487	1,763,631	6.1
Louisiana	1,506,032	126,745	1,632,777	7.0	904	50,456	1,683,233	6.8
Maine	505,417	31,328	536,745	5.7	960	17,111	553,856	5.6
Maryland	1,754,173	101,702	1,855,875	7.4	875	26,260	1,882,135	7.2
Massachusetts	2,247,348	121,132	2,368,480	5.1	840	25,460	2,393,940	5.0
Michigan	4,292,942	245,531	4,538,473	6.0	917	169,997	4,708,470	5.1
Minnesota	1,854,957	156,491	2,011,448	4.2	852	166,188	2,177,636	3.5
Mississippi	1,126,492	111,412	1,237,904	7.0	1,006	30,220	1,268,124	6.7
Missouri	2,474,455	237,871	2,712,326	5.3	810	144,709	2,857,035	4.9
Montana	370,101	65,679	435,780	7.0	800	29,011	464,791	5.8
Nebraska	784,117	91,014	875,131	5.5	814	77,693	952,824	4.6
Nevada	342,217	43,058	385,275	8.0	977	15,336	400,611	7.6
New Hampshire	371,037	15,978	387,015	5.2	1,015	5,829	392,844	5.0
New Jersey	2,950,357	260,005	3,210,362	1.9	879	66,312	3,276,674	3.7
New Mexico	626,093	92,003	718,096	6.5	1,035	15,918	734,014	6.2
New York	5,505,005	260,197	5,765,202	3.5	859	221,154	6,006,356	3.3
North Carolina	2,571,254	227,471	2,798,725	7.2	895	77,686	2,876,411	6.9
North Dakota	771,034	33,379	804,413	4.7	718	113,034	917,447	3.0
Ohio	4,717,924	422,948	5,140,872	5.8	830	139,625	5,280,497	5.6
Oklahoma	1,402,727	144,055	1,546,782	6.5	879	48,940	1,595,722	6.2
Oregon	1,135,507	132,010	1,267,517	6.6	846	50,031	1,317,548	6.3
Pennsylvania	4,031,573	207,002	4,238,575	6.0	877	160,449	4,399,024	5.7
Rhode Island	351,424	22,591	374,015	6.0	724	11,160	385,175	6.0
South Carolina	1,352,147	110,537	1,462,684	7.0	1,025	34,135	1,506,819	4.7
South Dakota	364,071	29,421	393,492	6.6	870	104,111	497,603	7.7
Tennessee	1,957,512	214,030	2,171,542	4.4	967	47,079	2,218,621	4.5
Texas	6,513,751	521,822	7,035,573	5.7	972	176,676	7,212,249	5.5
Utah	573,030	51,156	624,186	7.5	829	23,956	648,142	7.2
Vermont	235,177	15,663	250,840	7.0	1,003	5,150	255,990	6.7
Virginia	2,793,777	232,523	3,026,300	6.6	927	47,690	3,073,990	6.8
Washington	1,602,945	113,638	1,716,583	5.7	766	50,353	1,766,936	5.4
West Virginia	718,452	90,426	808,878	4.3	955	9,359	818,237	4.1
Wisconsin	1,067,024	161,100	1,228,124	5.3	976	123,511	1,351,635	5.2
Wyoming	242,017	43,717	285,734	7.0	1,052	40,707	326,441	7.0
Dist. of Col.	241,134	17,871	259,005	1.5	981	3,731	262,736	1.3
Total	94,052,268	8,312,030	102,364,298	5.8	877	3,040,036	107,004,334	5.5

1/ These estimates were made by the Federal Highway Administration on the basis of State reports of motor-fuel consumption in the early months of 1972, and information available on current trends, motor-fuel production, and other factors.

TRANSPORTATION AND THE ENERGY CRISIS

National Coalition on the Transportation Crisis
Brookland P.O. Box 4529 Washington, D.C. 20017



Presented At
The Connecticut Conference
On Transportation
May 16, 1973

by
GEORGE W. BROWN, Ph.D.
Transportation Consultant

The author has a BA degree in General Science, a MS degree in Metallurgy and Chemistry, and a Ph.D. degree in Physiology. He has conducted research analyzing vehicle, roadway, and driver factors courses in Accident Analysis, Traffic Safety, and the production of motor vehicle accidents. He taught Motor Vehicle Safety Design in the Engineering and Law Colleges of the University of Iowa.

He was also a guest lecturer for Transportation Systems Analysis. At present the author is self employed as a Transportation Consultant.



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nergy, atmosphere, water, and land are man's most precious assets, requiring prudent management to insure the longest possible lifetime for mankind on planet earth. The saddest law of the universe, the second law of thermodynamics, states that eventually the earth will die. Significantly, the second law deals with energy, proving the fact that wherever free energy is converted to work or heat a certain amount is irretrievably lost, no matter how perfect the conversion system. Man can exist within the confines of this sad law for several million years or he can squander his irreplaceable energy reserves, as we have been doing for the past 20 years in the United States, and shorten his survival time to a few hundred years, or less.

The present American transportation system is a major factor for the World's serious depletion of energy reserves, fouling of the atmosphere, and destruction of the land. Our technologists have created, and continue to create, a transportation system requiring an individual who must move from one place to another to either drive an automobile on roads and streets created for its use, or fly on jet aircraft. Both modes of travel are designed to maximize fuel and atmospheric consumption. Furthermore, our Society has become structured in such a way as to demand the maximum daily movement of a maximum number of people. As if this weren't enough, we are now in the midst of the process of maximizing the consumption of fuel, air, and land required to move our worldly goods. From 1965 to 1970 we have increased the tonnage of freight moved on the highways 99.3%¹.

In terms of human values we can state that the American Transportation System is the largest technological failure the world has ever seen. During 1970 the motor vehicle portion of this system was directly responsible for taking the lives of 54,700 people while injuring an additional 3.6 million². A conservative cost estimate for killing and injuring these citizens is 13.6 billion dollars³. Twenty five per cent of the registered motor vehicles in the United States were involved in accidents during 1970⁴. One wonders why these yearly costs do not cause rational men responsible for transportation planning to recognize the failure of the system. Their sole response is to blame the users of the system for its failure.

In addition to its direct human life and dollar cost, our transportation system is devouring untenable amounts of irreplaceable energy resources. Sooner

or later men will come to recognize that available energy is the most precious commodity on this earth. Without energy, money and possessions are worthless. Each of us requires about 3000 Calories in food energy each day⁵, and we need to recognize the caloric requirements of our transportation systems. Of course the sources of energy are different for transportation and for living. The energy required for our transportation systems is not replaceable while the energy we consume as food is largely replaceable. In other words, the well will run dry for transportation energy. It is only the timing that is in doubt. Therefore, let us consider our transportation energy consumption in human equivalents. During 1970 our automobile population in the United States consumed 65.6 billion gallons of gasoline¹. The average energy content of a gallon of gasoline is 32,144 Calories⁶. Therefore, the 1970 road and street usage of gasoline to run only our automobiles consumed sufficient energy to feed 1.93 billion humans a 3000 Calorie per day diet for one year. If we disregard light, medium, and heavy single unit trucks, and consider only semi-trailer and trailer trucks, utilized in the main to supplant rail freight shipments, we find that this category of heavy trucks consumed 8.4 billion gallons of diesel fuel during 1970¹. Diesel fuel energy content averages 36,263 Calories per gallon⁶, and the human caloric equivalent for 1970 was enough energy to feed 277 million people for one year. Domestic air travel in the United States during 1970 required 6.9 billion gallons of fuel⁷, enough calories to feed a 3000 Calorie per day diet to 230.3 million people for a year. The tragedy associated with this profligate consumption of energy is, we are not getting a good transportation system in return for our extravagance. Passenger, freight, and mail movements are becoming progressively less efficient as the dollar costs for the services escalate even more than the general inflation trends.

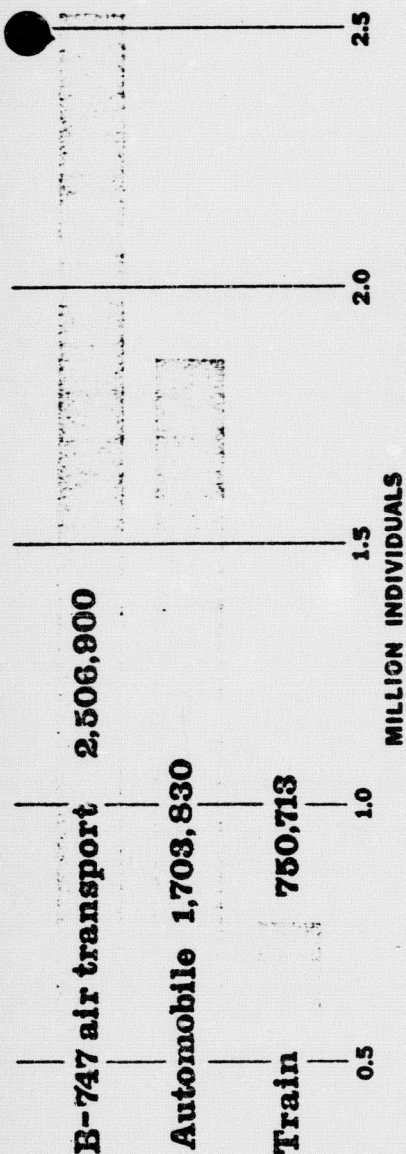
Government agencies cannot be relied upon to make rational predictions regarding energy reserves or the effect of transport decisions on future consumption. By 1969 the United States, with only 5.7% of the World's population, was consuming 29.9% of the World's crude oil production. In energy terms, our motor vehicles consumed 16 times as many calories as was required to feed our entire human population. In spite of the implications for petroleum shortages inherent in this enormous consumption of fuel, a petroleum geologist representing the U.S. Geological Survey (at a meeting called by the Governor of Iowa to discuss environmental problems) in December 1970 stated there was no possibility of petroleum shortages in the United States for the foreseeable future. Upon closer questioning regarding the source of his predictions he admitted that his assurances were based upon statements submitted by the major oil corporations. As late as the Spring of 1971 Secretary Volpe of the U.S. Department of Transportation was enthusiastically

supporting the concept of a subsidy for the creation of an American fleet of SST's with admitted fuel consumptions of at least 15,000 gallons per hour. The idea that World oil reserves might not be able to sustain the additional strain implied by an SST transport system was considered a frivolous argument advanced by eco-freaks. Yet the winter of 1972 found farmers unable to obtain fuel for grain drying and public institutions unable to obtain fuel oil for heating purposes. It is obvious that government information regarding the exact status of the present energy crisis cannot be relied upon, particularly when the oil corporations are allowed to treat oil reserve information as confidential. It is equally obvious that our extravagant consumption of petroleum products in support of an obsolete transportation system cannot continue without dire consequences.

In the long run drastic changes will have to be made in our transportation systems and replaceable fuel energy sources will have to be developed. For the immediate future, transportation planning must be oriented to human needs rather than to corporate or machine needs. Any transport system utilizes resources, and the primary resources which have great significance for human needs are energy, atmosphere, and land. In order to impress upon planners the vital cost of transport modes a 'human equivalent' scale for air, land, and energy consumption is required. Three thousand Calories is a reasonable daily requirement for food energy for one human. Therefore, a 3000 Calorie Unit can be treated as one 'human equivalent' for energy consumption. One adult engaged in normal activities will have a respiratory exchange of about 26,000 cubic inches per hour⁸. Thus, 26,000 cubic inches of air can be treated as one 'human equivalent' for atmospheric consumption. It appears reasonable to suggest that one half acre of land per person is required for housing and agriculture to support a population base, so 1/2 acre can be designated a land 'human equivalent'.

Utilizing a human equivalent scale, based on these concepts, we can visualize the costs inherent in transporting 360 passengers 500 miles by air, automobile, or train. A B-747 jet, fully loaded, could make this 500 mile trip in 1.1 hrs., with a fuel consumption of 3,911 gallons⁷ and requiring 25,600 acres of land for two safe landing fields. The human equivalent for fuel is 46,700; land use - 51,200; atmospheric consumption - 2,409,000 for a total human equivalent scale value related to energy, land, and atmospheric consumption, of 2,506,900. Ninety automobiles, carrying four passengers each, could transport the 360 passengers 500 miles via freeways in 10 hours with a fuel consumption of 3316 gallons¹. The human equivalent for fuel is 40,330; land use - 56,000; and atmospheric consumption - 1,642,500 for a total equivalent scale value of 1,738,830. One train would transport the 360 passengers 500 miles in 8.3 hours with a fuel con-

Human Equivalent Energy, Atmosphere & Land Use in Transporting 360 Passengers 500 Miles



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sumption of 1238 gallons⁹. The human equivalent for fuel is 14,965; for land use - 12,121; and for atmospheric consumption 723,627 producing a total equivalent scale value of 750,713. Thus it is readily apparent that the transportation systems selected for heavy subsidy were the most destructive choices, when due concern is given for the use of our irreplaceable resources of energy, land, and atmosphere. It is also apparent that continued expansion of air and automotive transport modes cannot continue. The notion that we can continue an absolute 4.5 million vehicle per year expansion of our motor vehicle population if only exhaust emissions are controlled, at the expense of greater fuel consumption and larger sized engines, is a cruel hoax, accomplishing nothing but diverting our attention from the fact that our transportation systems are failing.

Rational action must be taken now to provide time in the immediate future for the planning and development of long term tenable transportation systems. Some immediate actions required are:

1. Prohibit the construction of one more square inch of rural or urban freeways. We must recognize that the automobile is essentially a low speed transportation device suitable for moving people and goods from thinly populated areas to junctions on high density traffic corridors. Paved road surfaces are required in these rural areas, and they have been neglected in order to concentrate on rural and urban freeway construction. Under no circumstances should the use of automotive transport be planned for high speed, high traffic density, long distance movements or for urban commuter transportation.
2. Discontinue the costly and inefficient attempts to promote emission controls. Instead of these standards, the DOT could place mandatory limitations on the size of engines for all new automobiles and set national rural speed limits of 50 MPH. One hundred cubic inch displacement engines are now available in passenger automobiles which give better than 30 miles per gallon fuel consumption. If these limitations had applied to the automobiles in use during 1970 the fuel saved in that one year would have been 36 billion gallons¹.
3. Tax presently available automobiles and trucks at a rate commensurate with their fuel consumption and road damage potential. This would accelerate the existing trend toward smaller, more economical cars, and put heavy freight shipments back on the railroads. If the freight shipped in semi-trailer and trailer trucks during 1970 had been diverted to the railroads we would have saved 2.4 billion gallons of diesel fuel^{1,10}, enough to heat 1.2 million homes for one year in the Northern portions of the country.
4. Remove all public subsidy for airline operations and require all

flights to carry a full passenger load or cancel. The small percentage of citizens demanding airline service should be required to bear the full dollar cost for this extravagant use of resources. If during 1970 the airlines had been forced to cut services commensurate with full passenger loads, we would have saved 4.2 billion gallons of fuel⁷.

5. Provide major subsidy for rail freight, passenger, and urban mass transit construction and operations. At the present time rail transportation offers the greatest potential for conservation of vital resources in both urban and rural environments. Therefore, an effort at least as great as that now devoted to highway and street programs should be directed toward creating an efficient rail transit system.
6. Modify all urban renewal programs to provide housing, school, and recreational areas adjacent to business areas. We can no longer afford the concept that we must move entire segments of the population twice a day because some irrational technologists decreed it was possible.
7. Drastically reduce the costs and improve the efficiency of our communication systems. Considerable transportation energy could be conserved by lowered cost for telephone use and development of low cost closed circuit television.

For the long term future we must begin now to develop replaceable energy resources.

This is what the Atomic Energy Commission would have us believe they are doing when they promote nuclear power. As might be expected from a Commission born in secrecy and dedicated to the concept of maintaining an impenetrable lead curtain around their operations, AEC promises of unlimited sources of energy are largely illusory. Sources of fuel for their present generation of reactors are very limited, the prospects for an ultimate fusion reactor are dim, and the public health hazard inherent in following the nuclear rainbow is so great that the resources of the U.S. Treasury are required to provide liability insurance for nuclear plants¹¹. Fortunately, there are promising leads for the development of replaceable energy resources. It is estimated that solar heating and cooling of a home in Massachusetts can be accomplished for a total investment of \$3,000¹². Given this same collector system and a method for energy conversion and storage we would be well on the way toward a mobile power source. Electrified municipal transit systems are feasible in many of our cities if we use the water power sources available. My home town has two dams on a river where electrical power used to be generated. Both have been deactivated. One could easily run an area wide transit system. Refuse from our larger cities can be used as a valuable source of methane, a highly suitable fuel for propulsion systems. Wind power is likely to again be taken seriously. A new 10,000 ton sailing passenger vessel is due to be launched late in 1973 to provide luxurious accommodations

for trans-oceanic passages at speeds comparable to other ocean liners. A 17,000 ton sailing freighter has also been designed in Hamburg, Germany¹³.

The need for immediate and long term revision of transportation and energy policies is urgent. Yet we see private Corporations gaining absolute control over all sources of fossil fuel energy as well as uranium ore. Accompanying this is the trend toward corporate farming and control of the food cycle. Thus, corporate control of the Calorie, man's most precious commodity, already exists for fossil fuels, and is rapidly becoming a reality for food energy. The public must gain a voice in the control of energy expenditure before present policies destroy all of us. Experience has demonstrated that the creation of another government agency or groups of agencies won't get the job done. The Federal Department of Transportation was created to bring about an integrated rational transportation policy and we have seen nothing but a proliferation of old mistakes.

Democracy must be injected into the decision making process. We must devise a Public Advocate system¹⁴. The system would require that a paid public advocate would have the right and duty to argue for the Public's position before all decision making bodies. For example, a State Highway Commission could not make a decision based on their staff's recommendations until they had heard the Public Advocate's presentation. Energy, atmosphere and land use policies directly affect the lives of all citizens. It is a public scandal of major dimensions when we allow Corporate interests, in collusion with governmental entities, to have dictatorial power concerning the use of these resources. Granting eminent domain power to highway interests and utility corporations without a referendum for the citizens affected should not be tolerated. Absolute control of the World's energy reserves cannot be entrusted to the oil corporations without public veto power at the Board level. People all over the World are beginning to recognize these evils and demanding democratic decision making processes. In the United States we call this citizen criticism the consumer or environmental movement, and minor concessions to public participation are beginning to appear. So far, the concessions are primarily cosmetic. Governmental Agencies and private corporations exhibit a deep distrust of the public. News media coverage of policy decisions affecting the public welfare is often superficial and hostile to public interests. Recently, in response to public clamor for representation, regional planning commissions have been directed to form citizen advisory committees to 'aid in the planning process'. Naturally, no money was provided the citizen advisory committees for professional help to create a citizen advocate position, nor were the advisory committees allowed a decisive vote at meetings of the entire planning commission. When some of these citizen advisory committees devoted the time and found voluntary help necessary to develop rational regional transportation plans, the parent

planning commissions simply abolished the rebellious advisory committees and formed new committees with membership more likely to conform with established policy of unlimited growth of the automotive transport sector. In depth news media coverage of this type of outrageous behavior on the part of Public Officials and Agencies is almost non-existent. We must create a Democratic system to protect us from special interest policy decisions. There is no better use of public funds than expenditures directed toward providing paid Public Advocates to forcefully present the public interest position in opposition to vested interests before all corporate and governmental agencies where decisions affecting the welfare of citizens are made. Such proceedings must receive complete, accurate, in depth news media coverage. Hopefully our institutions will respond in a constructive manner to this type of public interest pressure. If they will not, irate citizens will eventually revolt against dictatorial control over vital resources.

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